

Watergate and the Law Schools

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Senator Talmadge: Now, will you look at exhibit No. 34-47 . . . it is a list of all of the people that you thought had violated the law and what the laws may be that they violated, is that correct?

Mr. John W. Dean, III: That is correct.

. . . .

Sen. Talmadge: Now, you have a star by Mr. Mitchell's name and no star by Mr. Magruder

. . . .

Mr. Dean: [A]fter I did the list—just my first reaction was there certainly are an awful lot of lawyers involved here. So I put a little asterisk beside each lawyer

Sen. Talmadge: Any significance to the star? That they are all lawyers?

Mr. Dean: No, that was just a reaction myself, the fact that how in God's name could so many lawyers get involved in something like this?¹

From that moment on June 26, 1973 the national scandal which we call Watergate became a particularly embarrassing tragedy for the legal profession. It is unfortunately true that approximately half of the individuals indicted or convicted for Watergate-related crimes are lawyers, and this does not include the recently resigned

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1. *Hearings Before the Select Comm. on Presidential Campaign Activities of the United States Senate*, 93d Cong., 1st Sess., Phase I, *Watergate Investigation*, Bk. 3, at 1053-54 (1973).

President, Vice-President, and scattered other lawyers whose involvement in Watergate and other criminal behavior and "dirty tricks" have been widely suspected.

Of course, it is true that many of the heroes of the Watergate investigations and prosecutions are also lawyers: Cox, Jaworski (former American Bar Association president), Richardson, Ruckleshaus, Sirica, Ervin and other members of the Senate Watergate and House Judiciary Committees.

But it is normal to highlight the lawyer villains and not the heroes. Lawyers have never been popular. Carl Sandburg speculated: "Why is there always a secret singing when a lawyer cashes in? Why does a hearse horse snicker hauling a lawyer away?"² Dickens ridiculed lawyers' avarice and interminable delays, and Shakespeare recognized the priority of killing all the lawyers for a revolution to succeed.³ More scientific surveys of public opinion reveal that in the United States lawyers have had a mixed but unimpressive reception. A 1940 survey in California regarded lawyers' ethics and honesty as worse than that of people in general.⁴ More recent surveys have ranked lawyers high with regard to professional ability but lower than most other recognized professions in regard to general reputation and truthfulness,⁵ although lawyers seem to enjoy a better public image than politicians and those who help create the profession's image, television and newspaper commentators.⁶

It may be that the nature of the lawyer's calling, no matter how honorable it appears to the profession, inevitably leads to public disdain and distrust. Affording criminal defendants their right to due process of law by zealous representation, representing all shades of unpopular clients, influencing and deciding controversies in which one or more parties must become losers, and largely operating the processes of government, with all of its negative and "Big Brother" connotations, important as these tasks may be to society, are not calculated to win friends and favorably influence people. Woodrow Wilson's observation may be more apt today: "Society was always ready to be prejudiced against [lawyers]; now it finds its prejudice confirmed."⁷

2. C. SANDBURG, *THE LAWYERS KNOW TOO MUCH* (1920).

3. W. SHAKESPEARE, *KING HENRY VI*, Part II, Act IV, Scene II (circa 1590).

4. See O. PHILLIPS & P. MCCOY, *CONDUCT OF JUDGES AND LAWYERS* ix (1952).

5. *E.g.*, The Missouri Bar Survey, summarized at 8 AM. BAR NEWS 3-4 (No. 6, June 15, 1963).

6. *Id.*

7. W. Wilson, *The Lawyer and the Community*, 35 A.B.A. REPORTS 419, 426 (1910).

Nevertheless, the misdeeds of the Watergate lawyers involve more than image tarnishing. A large number of the showcase successes of the profession have acted unethically, dishonestly, corruptly, and criminally. But out of the debris of these fallen idols an opportunity for professional reform, more favorable than perhaps at any other time in our history, has arisen.

The public spotlight and pressures are now causing all elements of the legal profession to pay careful heed to the voices of critics which in the recent past were lost in the wilderness or on the dusty shelves of law library stacks. It has been more than five years since Ralph Nader commented upon the incestuous relation between lawyers and government, observing that the lawyer was the most irresponsible factor in the equation of special interest and the government "because he hides behind the client-lawyer relationship to pursue all kinds of anti-social policies."⁸ And we are now rediscovering the excellent 1970 report of Justice Tom Clark's American Bar Association Committee on Evaluation of Disciplinary Enforcement which found

the existence of a scandalous situation that requires the immediate attention of the profession. With few exceptions, the prevailing attitude of lawyers toward disciplinary enforcement ranges from apathy to outright hostility. Disciplinary action is practically non-existent in many jurisdictions; practices and procedures are antiquated; many disciplinary agencies have little power to take effective steps against malefactors.⁹

Not only is the disciplinary effort against Watergate offenders and others being stepped up, but general reform of the profession's competence, ethics, and fee structure is being prodded from within and without. Justice Department threats against anti-competitive practices and the verbal indictments of Senator Tunney's subcommittee investigating the profession are matched by the down-to-earth but eloquent scoldings of Chesterfield Smith, immediate past president of the American Bar Association, and other national and local Bar leaders.

The current ABA president, James D. Fellers, as well as Justice Clark, are among the numerous members of the Bar and the press who have focused on legal education, and more particularly lack of

8. Donovan & Wise, *Where to Look for Another Fortas Scandal*, 50 TRUE, Sept. 1969, No. 388 at 29, 106.

9. ABA SPECIAL COMM. ON EVALUATION OF DISCIPLINARY ENFORCEMENT PROBLEMS AND RECOMMENDATIONS IN DISCIPLINARY ENFORCEMENT 1 (1970).

ethics inculcation, as both a whipping post and a partial potential salvation for many of the profession's moral maladies.

It is quite natural that in attempting to analyze and reform the profession attention should be focused on the one thing that virtually all lawyers have in common, a law school education. Unfortunately, however, their confidence in the curative effects of an improved legal education is largely misplaced. The press asks, and the Bar demands to know: "Why the law schools don't teach ethics anymore?" And many seek rules to make sure they do.

Regrettably, these charges and hopes rest upon two erroneous assumptions: (1) Law schools do not teach ethics; (2) It would make a difference if they did. In fact, the law schools do teach ethics, probably more and better than ever in their history. But teaching ethics or other such minor tampering with the law school curriculum is unlikely to have significant influence on the professional behavior of law school graduates, particularly when engaged in activities of the type which led to the opportunity for involvement in the Watergate debacle and its subsequent cover-up.

EXTENT AND EFFECT OF ETHICS INSTRUCTION

The most complete study of the extent of legal ethics instruction in law schools was conducted by Professor LeRoy Lamborn for the American Bar Foundation in 1962-63.¹⁰ He found that 77% of the then 134 ABA accredited law schools offered a course in legal ethics or professional responsibility, and, of these, 84% required the course and 88% gave credit for it. In addition, he found that more than 80% of law schools claimed to expose their students to ethical considerations through the pervasive method in courses devoted to a wide variety of subjects, through legal clinic programs, through organized lectures and discussion groups with members of the practicing bar and judiciary, and through an assortment of co-curricular activities such as honor systems, orientation programs, recommended reading lists, and student bar involvement. In 1967-68, other surveys revealed that of the 115 member schools of the Association of American Law Schools, 79% offered a course in legal profession or ethics and 76% of these required the course,¹¹ and of 125 of the 152 ABA accredited schools replying to a questionnaire, 93% indicated that they offered one or more courses designed "to

10. L. LAMBORN, *LEGAL ETHICS AND PROFESSIONAL RESPONSIBILITY, A SURVEY OF CURRENT METHODS OF INSTRUCTION IN AMERICAN LAW SCHOOLS 3-11* (Amer. Bar Found. 1963).

11. Del Duca, *Continuing Evaluation of Law School Curricula—An Initial Survey*, 20 J. LEGAL ED. 309, 320-332 (1968).

promote pride in the profession and elevation of ethical standards."¹²

Another indication of the growing interest in professional responsibility by American law schools is the fact that 446 professors now list themselves as teachers of legal profession in the 160 law schools surveyed.¹³ This compares with 58 teachers in 91 approved law schools prior to World War II, in 1939-40,¹⁴ or an increase of 779% in legal ethics teachers while the number of law schools less than doubled. Of course, this has been accompanied by a large growth in the number of law students, as well as law teachers, but their percentage increase has only been about half of that of teachers of legal ethics.

If it therefore can be acknowledged that law schools are giving extensive and increasing attention to instruction in legal ethics, what effect has this had upon law school graduates and what effect can it reasonably be expected to have in the future? Unfortunately, the existing studies on these questions provide little basis for optimism.¹⁵ Lawyer-sociologist Jerome Carlin, in his study of the ethics of the New York City Bar, concludes that it is most unlikely ". . . that commitment to professional norms and values can be learned in the course of professional training . . ."¹⁶ He further states that it is naive for legal educators to assume that even if such a commitment could be acquired in law school, the graduate would be disposed to conform to such ethical standards in the practice of law. Lawyers ethical behavior, according to Carlin, is determined by "inner disposition" and "situational controls". Carlin suggests that even if the ethical rules were properly defined, effectively internalized, and actively enforced, they still might not be faithfully observed because of lack of attention to and control of the social context in which they operate.¹⁷

12. Report of the Comm. on Education for Professional Responsibility, App. A, Part 1, A.A.L.S. Proceeding, Part One, at 23, 26 (1968).

13. 1974 DIRECTORY OF LAW TEACHERS 882-85 (A.A.L.S.).

14. 1939-40 DIRECTORY OF LAW TEACHERS.

15. See survey of the studies in E. Smith, *Some Sociological and Psychological Problems in Education for Professional Responsibility* in EDUCATION IN THE PROFESSIONAL RESPONSIBILITIES OF THE LAWYER 295-304 (D. Weckstein ed., U. Va. Pr. 1970) [hereinafter cited as Weckstein].

16. J. CARLIN, LAWYERS' ETHICS, A SURVEY OF THE NEW YORK CITY BAR 4, 6 (Russel Sage Found. 1966).

17. *Id.* at 6.

Thus, Carlin found a bifurcated New York Bar. Those who were born into more established and affluent families, attended more prestigious colleges and law schools, and secured jobs in large firms with continuing clientele adhered to higher standards of ethics than those lacking such favorable background factors and struggling to attract one-shot clients in fields like personal injury, domestic relations, and criminal law.

As applied to the Watergate culprits, it may not be unreasonable to suggest that the ethical tone set by the administration which they were serving and the political morals of the market place in which they were operating provided situational controls which significantly influenced their unethical behavior.

One's inner disposition, or basic moral fiber, while potentially subject to continuing growth, is probably fairly well established by influences of family, church, and peer groups prior to a student's entry into law school.

Professor Theodore Newcomb, a social psychologist who has done extensive research and writing on the impact of college on students, recently stated in an interview that there is very little change that occurs in college students that is not equally matched in persons of similar age who do not go to college.¹⁸ He further observed that:

[M]uch of what colleges are supposed to do is predetermined by the kinds of people who are admitted in the first place In fact, a stronger case could be made for the argument that attitudes stabilize during college rather than change. While the data are limited, they show rather consistently that there is little change after college, even on the part of those who have changed in college. It is probable that noncollege people don't change much, either, after the age of 21 or 22.¹⁹

While Professor Newcomb recognizes that peer groups and the accepted norms of a reference group, including a college with an established image or value reputation, can effect changes in students, he observed that there isn't much evidence that faculty have any affect upon students.²⁰

These comments of Professor Newcomb somewhat glibly summarize an extensive review which he and a colleague have written of the various studies which have been made of the impact of college on students.²¹ These studies generally do conclude that students'

18. C. Tavis, "What Does College Do for a Person?" "Frankly, Very Little." *A Conversation with Theodore Newcomb*, 8 *PSYCHOLOGY TODAY*, Sept. 1974, No. 4 at 73.

19. *Id.*

20. *Id.* at 73-74.

21. K. FELDMAN & T. NEWCOMB, *THE IMPACT OF COLLEGE ON STUDENTS* (Jossey-Bass 1969).

attitudes change while in college, and in some regards in a different degree than students of similar age who do not go to college. The nature and degree of change, however, tend to vary with the attitude or value being tested (for example, they become more aesthetic, liberal, and intellectual and develop a higher level and more flexible sense of moral judgement while becoming less moralistic and religious), as well as the type of school attended, major field of study, living arrangements, peer group contact, and extent of faculty interaction, among other factors.

Perhaps the most extensive survey of changes in law school ethical attitudes was conducted by Professor Wagner Thielens of Columbia University's Bureau of Applied Social Research.²² He surveyed the responses to questions designed to elicit ethical attitudes of entering students at four eastern law schools in 1961 and of these same students when they were graduating in 1964. While the students' ethical orientation, both as entering students and graduates, was not particularly impressive, there was a slight net average change toward more ethical positions, from 54.4% at entrance to 60.8% at graduation. Nevertheless, this average change masks what may be a much more significant change in individual student ethical responses. According to the questionnaire responses, 20% of the students switched to a more ethical stance while 15% of them responded in a less ethical manner. Thus, changes in opposite directions cancelled each other out and tended to produce a small net change even though over a third of the individual students did experience a change in their ethical attitudes while attending law school.

Interestingly, in surveying practicing lawyers in New York on the same set of questions employed by Thielens, Dr. Carlin found a slight decrease in ethical responses by members of the Bar to 52.8%.²³

An earlier comparative study of law and medical students revealed that law students became less cynical and more humanitarian during their legal education while medical students had attitude shifts in the opposite directions, at least at Yale.²⁴

22. Thielens, *The Influence of the Law School Experience on the Professional Ethics of Law Students*, 21 J. LEGAL ED. 587, 590-91 (1969).

23. Carlin, *supra* note 16, at 144.

24. Eron & Redmount, *The Effect of Legal Education on Attitudes*, 9 J. LEGAL ED. 431 (1957).

All of these studies are subject to methodological and other criticism, and further study is undoubtedly called for to determine the relative influence on the ethical attitudes of a lawyer of factors such as inner disposition, peer group norms, curricula and faculty exposure, and situational controls. Nevertheless, the existing studies do suggest some useful hypotheses: (1) Legal education has apparently contributed little to the overall ethical posture of law school graduates; (2) Law students are not entirely immune from change; (3) Some methods of inculcating some student attitudes hold more promise than others.

SOME SUGGESTIONS FOR EFFECTIVE PROFESSIONAL RESPONSIBILITY TRAINING

While a reorientation of legal training cannot guarantee against future Watergates or more common varieties of lawyer malfeasance, some progress toward a more ethically abiding Bar can be made if appropriate means are utilized to influence those student values and attitudes still subject to change after a person has endured at least twenty-one years of life and sixteen of formal education.

To begin with, we must identify the professional responsibility we hope to inculcate. What are the values and attitudes that a lawyer should possess?

I propose a functional definition: The lawyers' professional responsibilities are all those things that lawyers, individually and collectively, must do to best effectuate the role of lawyers in society.

The first element of professional responsibility training should be an exploration and evaluation of what useful roles lawyers have performed and can perform in our society. This inquiry involves aspects of history and anthropology as well as philosophy and sociology. From the former two disciplines, we learn that law and lawyers, whether in primitive or sophisticated form, whether labeled as such or not, are essential elements of all organized societies. If the main purpose of lawyers is to make law work, then the lawyering role is inevitably tied to the function of law in society, a matter which also involves inquiries of a jurisprudential and sociological nature.

Among the recognized roles of law are the establishment of justice, the accommodation of maximum freedom with essential peace and order, the satisfying of human wants and desires, the settling and preventing of disputes, and other methods of ordering human conduct in accordance with the perceived goals of the society. In

the United States, law has played a particularly important role. As De Tocqueville recognized, the high regard and respect for the rule of law, and the key role of lawyers, characterized our early government and society to a greater degree than that of almost any other nation.²⁵ Woodrow Wilson's comment that in America almost every question of public policy seemed eventually to become a legal issue²⁶ has proved to be not only accurate history but prophecy. The law has led the way to or expressed an American moral consensus on desegregation of the races and other civil rights, allocation of political power among the people and as between the states vis-a-vis each other and the federal government, and on the very issues of the creation of life (birth control and abortion) and its termination (capital punishment and organ transplants). To the astonishment of most of the rest of the world, we "have let the law take its inexorable course against top government officials right to the presidency itself."²⁷

The general acceptance of these legal dispositions has not been based upon necessary agreement with the result but on respect for the due process of law. This concern with adherence to process, even to correct defects in the legal process itself, is embedded in our Constitution and national fibre and constitutes the essence of the rule of law in the United States.²⁸ Implicit in this process is a valuing of the importance of means over ends. It is this concept that we reaffirmed through the triumph of constitutional government over Watergate, and, ironically, this same concept which was not sufficiently appreciated by the Watergate conspirators.

G. Gordon Liddy, in his CBS televised interview on January 5th, 1975, acknowledged this when he reasserted his belief that the end justifies the means. Oddly enough, he projected this same view to United States District Judge John Sirica. Perhaps Judge Sirica's use of the sentencing threat to break the Watergate conspiracy of silence can be so characterized, but his overall performance in presiding over the Watergate grand jury and the various trials appear to illustrate the operation of due process of law under very difficult circumstances.

25. A. DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* (A. Knopf ed. 1946).

26. Wilson, *supra* note 7, at 421.

27. Cribbet, *Legal Education and the Rule of Law*, 60 A.B.A.J. 1363, 1364 (1974).

28. *Id.*

It may be that the law schools have to some extent contributed to this ends justifies the means philosophy of the Watergate culprits. There is a difference in application, but not in underlying principle, between those who would state that it is a lawyer's duty to use any means (legal or illegal; honest or dishonest) to get his client off or otherwise achieve a victory and those who would break into a psychiatrist's office or engage in illegal wiretapping in the name of national security or to get their candidate elected and save the world from George McGovern. The duty of loyalty owed to a client comes not from the force of an employment contract or from game-like competitiveness, but from the lawyer's role in serving the administration of justice. To be effective, this system demands that lawyer-representatives be loyal and zealous on behalf of their clients as well as competent, truthful, and fair. Inherent in the legal system that gives rise to these duties is the limitation that they be executed within the law.

Elliot Richardson noted in the Watergate conspirators the danger and predictable consequences of joining an obsession with winning with an uncritical belief in the complete rightness of one's own patriotic motives.²⁹ It is ironic that those who most vocally condemned and actively prosecuted civilly disobedient protestors against the Vietnam War later could only weakly justify their own lawlessness as "serving a higher cause."³⁰

We must encourage our law students to accept the priority of process over results and means over ends both explicitly through explorations of the role of law in society in Professional Ethics, Legal Process, and Jurisprudence courses, and implicitly by the stated or unstated assumption of the importance of the rule of law throughout the curriculum.³¹ In my mind, so long as we have a legal process that establishes means for redressing grievances and correcting injustices, including those in the process itself, there is no proper place in the lawyer's arsenal for violations of law, or even civil disobedience, to achieve the same ends. It is equally a contradiction in terms to violate a person's legal rights in the name of law and order or to seek "justice" "for the cause" or for an individual client by means of violence or falsehood. This does not preclude law violations as test cases. They are a recognized part of the legal process. Nor need it dissuade those who choose to serve a perceived higher law with which the state's law conflicts, but

29. Speech to the American Bar Association Annual Meeting, Honolulu, Hawaii, August 15, 1974.

30. The analogy is recognized, and carried too far in Bickel, *Watergate and the Legal Order*, 57 COMMENTARY, Jan. 1974, No. 1, at 19.

31. See Cribbet, *supra* note 27. See also D. Weckstein, *A Coordinated Approach*, in Weckstein, *supra* note 15, at 188-98.

they must realistically weigh the consequences of criminal and professional sanctions versus a perhaps more nebulous higher reward. The state of mind of a civil disobedient lawyer or other person, nevertheless, is an appropriate consideration in determining the extent of professional discipline or other earthly punishment, if any be merited under the circumstances.

For those lawyers who disclaim professional responsibility for the Watergate offenses because they were not committed while the individuals were engaged in lawyering activity, I suggest they look at the nature of the alleged crimes and their impact on the administration of justice: obstruction of justice, subornation of perjury, destruction of evidence, filing false statements, perjury, interference with a criminal investigation, misuse of internal revenue laws and information, and conspiracy to commit most of these. This was not a case of a vacationing lawyer having too much to drink. No one who had studied, and understood, the roles of lawyers in society could tolerate the professional membership of individuals who would employ such means for any purpose, no matter how desirable the end sought. Moreover, lawyers have a special competence and traditional involvement in the operation of government. Although such activities are not within the profession's exclusive monopoly, and shouldn't be, to deny a useful lawyering role is to go against history and, I believe, the public interest. Indeed, law school courses in Administrative Law, Legislation, Criminal Procedure, Judicial Administration—as well as Legal Profession and Jurisprudence and others, ought properly to include explorations of the lawyer as public servant, judge, legislator, prosecutor, administrator—and of the ethical issues likely to be encountered in such activities. Recognition of this lawyer role and its study in law school could also lead to governmental reforms to guard against future Watergates.

In addition to teaching the importance of the lawyer's role as guardians of due process of law, law school study of the functions of law and lawyers can lead to an acceptance of the social utility of such functions. Such understanding and acceptance provide an important incentive to live up to those professional responsibilities that are necessary to make the lawyer's role effective. Awareness of the likely consequences, should the legal profession default in its societal roles, may well instill a higher level of professional behavior than would the generally ineffective threat of disbarment

or other professional sanctions. Discipline from within is far more meaningful, pervading, and generally more efficacious than the remote apprehension of an irregularly and infrequently applied potential external discipline.

As recognized by Chief Justice Harlan F. Stone in his 1934 Ann Arbor address:

Men serve causes because of their devotion to them. The zeal of the student for proficiency in the law, like that of his elder brother at the Bar, comes from a higher source than selfishness. It is devotion to his conception of a useful and worthy institution [It is for the institutions of the law] to impart a truer understanding of the functions of those who are to be its servants. That understanding will come not from platitudinous exhortation, but from knowledge of the consequences of the failure of a profession to bear its social responsibilities³²

Another valuable objective in encouraging understanding of the societal functions of lawyers is that it furnishes a basis on which to formulate specific ethical standards as well as a criterion by which to test existing formulations. The 1958 Statement of the Joint Conference on Professional Responsibility well expresses these considerations:

A true sense of professional responsibility must derive from an understanding of the reasons that lie back of specific restraints, such as those embodied in the Canons. The grounds for the lawyer's peculiar obligations are to be found in the nature of his calling. The lawyer who seeks a clear understanding of his duties will be led to reflect on the special services his profession renders to society and the services it might render if its full capacities were realized. When the lawyer fully understands the nature of his office, he will then discern what restraints are necessary to keep that office wholesome and effective.³³

Other than a respect for the rule and instrumentalities of law, what are the other professional responsibilities needed to effect the lawyer's societal role?

For purposes of illustration, and at the risk of oversimplification, I suggest that the lawyer's role in our society basically includes: aiding in the establishment, operation, and improvement of the processes of law and government; articulating, responding to, and interpreting law related manifestations of individual and societal needs and demands; and individualizing the necessary generality of the law.³⁴

Among the particular tasks that lawyers have performed to carry out their general functions are giving advice, negotiating, litigating,

32. Stone, *The Public Influence of the Bar*, 48 HARV. L. REV. 1, 14 (1934).

33. *Professional Responsibility: Report of the Joint Conference*, 44 A.B.A.J. 1159 (1958).

34. See *id.*; Cheatham, *The Lawyer's Role and Surroundings*, 25 ROCKY MOUNT. L. REV. 405 (1953).

drafting, investigating facts, researching law, lobbying, adjudicating, and advocacy, as well as acting as a broker, providing public relations, securing financing, lending emotional support, and being a scapegoat.³⁵ But the appropriateness of each to the lawyering role must be evaluated in light of the uniqueness of legal training, client expectations, and social good.

A study now being undertaken by the American Bar Foundation is attempting to further identify what lawyers actually do. Additional studies will be necessary before appropriate societal roles for lawyers can be postulated. Only with such information, can any definitive statement of the lawyers' concomitant ethical responsibilities be formulated.

Nevertheless, based upon the lawyer's known and accepted functions, a number of recurring responsibilities can be tentatively identified: knowledge of law, legal processes, political theory, human behavior, and social and economic organization and relations; skill in operating within the legal processes and in advocating the interests of those represented; loyalty and zealotry on behalf of those represented tempered by an overriding fidelity to legal institutions and societal goals which requires honesty and fairness in relationships with clients, other lawyers and their clients, and agents of the lawmaking, interpreting, and applying instrumentalities; and making such legal services widely available without cost being an inhibiting factor. A system dependent upon lawyer representation to make it work must make available the services of such lawyers to all who can benefit by them.

How can the law schools best contribute to inculcating these types of professional responsibilities? Obviously, the law schools can and have played a useful role in transferring knowledge and perfecting skills, although we may not have yet reached the optimum balance among undergraduate institutions, law schools, and the practicing bar for the teaching of interdisciplinary learning, communication of legal knowledge beyond basic fields, and the so-called practice oriented skills other than legal analysis and research.

By contrast, existing studies indicate that the law schools cannot expect to have any significant impact upon character traits such as honesty, loyalty, and fairness which are part of an individual's

35. See Q. JOHNSTONE & D. HOPSON, *LAWYERS AND THEIR WORK*, ch. 3 (Bobbs-Merrill 1967).

probably previously formed inner disposition. Likewise, zealotness, discretion, sensitivity and other such responsibilities that may be implied in the lawyer's role are personality traits which are also largely determined prior to entrance to law school.

It is simplistic, however, to assume that once we recognize these traits as being important to the lawyer that they will find easy application in practice. In numerous situations these responsibilities may conflict or their application may be far from apparent. For example, how does a lawyer resolve his obligation to be truthful with his obligation of loyalty to a client who has confided to the lawyer that he has committed or is about to commit a criminal act? How does a lawyer exercise his zeal on behalf of a client who disrespects and is contemptuous of the legal system which the lawyer is sworn to serve? How can a lawyer fulfill his fiduciary obligations to two criminal defendants being jointly tried, or to a driver and passenger in the same accident, or to a husband and wife or business partners seeking to resolve their differences or dissolve their relationship? How can a lawyer accommodate a reasonable expectation to be compensated with the need to provide legal services for all who may need them regardless of the ability to pay? Is there any legitimate public interest in limiting the extension of legal services through advertising and solicitation by lawyers? If so, where should the line be drawn, and why? Should there be any inhibition upon a lawyer seeking to reduce the cost of legal services by arranging for non-lawyers to render them in whole or in part?

As in any law course, the first step to learning is to recognize the legal issue. Thus, on one level, law school courses can sensitize students to issues of legal ethics. Again, as with most all legal subjects, authoritative sources can be consulted for answers: statutes, codes of ethics, adjudicated cases, and opinions of bar association committees on legal ethics. These sources, of course, provide only one answer at a particular time and place, and they can be evaluated in light of closer analysis, experience, and changing conditions, and, altered in the future.

In short, useful and normal roles that legal education in professional responsibility can perform are an identification and study of the problematical situations which give rise to issues of legal ethics,³⁶ a knowledge of the existing standards for resolving those

36. An excellent course book for this purpose is R. MATHEWS, *PROBLEMS ILLUSTRATIVE OF THE RESPONSIBILITIES OF THE LEGAL PROFESSION* (6th Printing 1974). See also Mathews, *A Problem Approach*, in Weckstein, *supra* note 15, at 69-74.

issues, and an evaluation of whether such standards help effectuate or perhaps present obstacles to the fulfillment of the lawyer's role in our society.³⁷

While in some quarters the concept of professionalism is debunked, I believe that the study of lawyers as professionals can be a valuable educational enterprise. The idealistic elements of a profession should be identified and explored: primacy of service over profit, complex skills or extensive learning, standards of ethics and entrance and continuing controls to maintain them, (because of inadequacy of lay persons to timely perceive infractions). These elements may then serve as criteria by which to measure the performance of the organized bar and the legal profession in general and provide goals for continuing improvement.³⁸ Once again, "the fulfillment of function is substituted as a social force . . . [to] breathe the inspiration of service."³⁹

Most all of the aspects of a lawyers' professional responsibilities suggested can probably best be explored in a concentrated course in Legal Ethics, Professional Responsibility or Legal Profession. There are reasonable disputes as to whether such a course should be offered in the first, second, or third year, be required or elected, be taught by full-time professors, practitioners, or both, and what the precise coverage and number of credits should be.⁴⁰ These are pedagogical problems best left to the pedagogs, the law school faculties, who have properly resisted the attempt to impose a specific formula for instruction by state bar admission authorities and ABA accreditation standards. My own preference would be to introduce the role of the lawyer and nature of professionalism in the first year, perhaps in a Legal Process or Introduction to Law course, to be followed by an upperclass two or three credit course

37. A high quality comprehensive but slightly dated course book for these purposes is V. COUNTRYMAN & T. FINMAN, *THE LAWYER IN MODERN SOCIETY* (Little Brown 1966), supp. by R. MELOTT (1971). Other good but more traditional casebooks for use in a course of this nature are M. PIRSIG, *PROFESSIONAL RESPONSIBILITY* (2d ed. West 1970); S. THURMAN, E. PHILLIPS, E. CHEATHAM, *THE LEGAL PROFESSION* (Foundation 1970). See also Weckstein, *supra* note 15, at 41-62, 75-87.

38. See Weckstein, *Training for Professionalism*, 4 *CONN. L. REV.* 409 (1972).

39. MacIver, *The Social Significance of Professional Ethics*, 297 *ANNALS AM. ACAD. POL. & Soc. Sci.* 118 (1955), reprinted in part in PIRSIG, *supra* note 37, at 54, 59-60.

40. See Weckstein, *supra* note 15, at ch. 3.

largely concerned with sensitizing students to the problematic situations in which ethics issues arise and evaluating the standards used to resolve them. Whether this course should be required or elective would depend upon the extent to which such considerations were discussed in other courses by use of the pervasive approach.

In the studies of the impact of college on student values and attitudes, it is often noted that a greater degree of change is occasioned when desired values are exposed and reinforced in many ways, from admissions policy through educational techniques and extra-curricular activities.⁴¹ Thus, we cannot expect significant—nor any—value inculcation from a single course. It is apparent that there are counter forces at work during law school. For example, the uplifting value of a one-hour a week lecture on professional platitudes by a principled professor in a required course in Legal Ethics, if it is to have any more affect than weekly church services of similar duration, can be easily offset by other faculty members who when confronted with ethical questions plead lack of time, ignorance, or, even worse, irrelevancy to the importance of the “legal” subject matter. Likewise, we have little awareness of the positive or negative influences of fellow students and student organizations and of the increasing exposure through clinical programs and part-time employment to members of the practicing bar and judiciary. We would like to think that all of these influences are favorable, but recent experiences with honor codes and student cheating and plagiarism and Carlin’s study of limited sections of the practicing bar, as well as the pervasiveness of the Watergate scandal, gives us cause for concern and for further study.

What is needed is a coordinated approach.⁴² This would include an introduction to the philosophical and historical roles of law and lawyers, further exploration of such issues in perspective courses and seminars, a concentrated course dealing with the problematical situations and sociology of the legal profession, extensive use of the pervasive approach to raise, discuss, and examine upon ethics issues in all courses, a carefully controlled and faculty supervised clinic program including opportunities to discuss ethical questions in context, structured exposure to role models from the practicing bar and through readings and instructor identification, and an opportunity for students to exercise professional responsibilities through student honor codes and their administration, and participation in local, national, and student bar activities. A truly coordinated ap-

41. See note 21, *supra*; Dressel & Lehmann, *The Impact of Higher Education on Student Attitudes, Values, and Critical Thinking Abilities*, EDUCATIONAL RECORD 248, 256 (Summer 1965).

42. See Weckstein, *supra* note 15, at 188.

proach cannot be limited to academic contacts. The desired value orientation, if it can be agreed upon, should be reflected in promotional literature, catalogues, admissions policy, and to the extent feasible, student organizations and peer contacts. The goal is to structure the law school experience in a manner that is most likely to bring about frequent individual changes in the direction of higher professional ethics while guarding against slippage in the opposite direction.

Can all this be done? I doubt it. Should all this be attempted? I doubt it; but we should encourage consideration of some of these and other alternatives. To be too one dimensional in value orientation would probably result in teaching counter values by example. Restrictions would be placed on freedom of inquiry, speech, and association for both faculty and students. Unlike the Watergate culprits, we must not let the end justify the means.

The teaching of values is a very difficult enterprise. We must be careful to teach, *not to preach*. Emotional acceptance may well follow intellectual understanding but it cannot be coerced. Alexander Meiklejohn reminds us:

Here, as in all teaching the only essential is that one's methods shall be true to one's purpose. Like teaches like. If you wish your pupil to lie, you need only lie to him. If you wish your pupils to become cruel, be cruel to them.

. . . This means for example, that the teacher of freedom cannot 'sell' it as a bill of goods. Nor can he impose it by compulsion And this being true, the teacher of democracy may not . . . propagandize. He may not skimp or twist evidence. He may not use the arts of salesmanship. He may not entice or delude his pupils into the truth. He must practice what he preaches.⁴³

And Robert Matthews observes:

The learning process in a free country must abhor the coercion of values, of their insinuation without an understanding espousal. We must devote ourselves to discovering a means of training in the capacity to perceive the presence of an ethical issue, to appreciate the values at stake and the considerations which must govern a choice between them. We must hope that the choice will then be wise, but we must protect the freedom to make a choice we deem unsound, even the freedom to reject the very values we treasure most. Only in this way can we engage in a process of teaching that is consistent with the values we cherish and with the fundamental faith on which our institutions rest; only in this way can we

43. A. Meiklejohn, "They Were Teachers," in a tribute to Louise Pettibone Smith and Royal France.

introduce into our national life persons sincerely dedicated to the American tradition.⁴⁴

Obviously, the lessons of these two powerful passages from two great teachers were lost on the lawyers involved in Watergate. Or were they ever exposed to such lessons? Law schools often demonstrate by example lessons quite inconsistent with the values we profess. Psychiatrist-law teacher Andrew Watson suggests that a partial cause for Watergate was the failure of the law schools to develop an emotional coping-capacity in their graduates. Indeed, he rightly asserts that:

[L]aw students spend three years in an atmosphere which teems with intellectual activity and ideas, but which at the same time, constantly obscures, downgrades or actively criticizes emotional issues and reactions They logically deduce that if they are to be competent, effective and respected lawyers, they must learn how to banish emotionality from their lawyer work. Such a goal . . . is totally delusional.⁴⁵

While these are sound observations, it would be a mistake—and a rejection of a prime educational mission—if we were to go to the excess of encouraging a “revolution of unreason.” Rationality is still the key to the legal process and the lawyer’s role therein.

Dr. Watson recommends that the law schools should offer many opportunities—in Legal Profession courses, other classes, taught Socratically or not, clinical programs, *and* on final examinations—for their students to encounter and struggle with knotty ethical conflicts.

It is clear that what we are doing now is inadequate. To a large extent people behave as they are expected to behave, and their expectations arise less from what they are told than from the examples they observe. The examples law schools frequently project by begrudging one-credit courses and instructor ignorance and apathy in regard to ethical issues is one of unconcern and cynicism. While short of the optimum, a simple commitment to seek and try more meaningful methods of teaching professional responsibility can make an important contribution to student perceptions of lawyer values.

The law schools still sow the seeds of future Watergates. But, hopefully, the weed-like growth of the instant one will inspire dedicated efforts and active research and experimentation to eradicate its roots.

44. R. Mathews, *The Lawyer as a Community Leader*, in CONFERENCE ON THE PROFESSION OF LAW AND LEGAL EDUCATION 29, 37 (U. Chicago 1952).

45. Watson, *The Watergate Lawyer Syndrome: An Educational Deficiency Disease*, 26 J. LEGAL ED. 441, 443-44 (1974). See also Watson, *The Quest for Professional Competence: Psychological Aspects of Legal Education*, 37 U. CIN. L. REV. 91 (1968).