

# LAW AND CONTEMPORARY PROBLEMS

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## FOREWORD

THOMAS B. METZLOFF\* AND DAVID B. WILKINS\*\*

In December, 1990, the W.M. Keck Foundation, perhaps best known for its programs supporting developments in the sciences, initiated its Law and Legal Administration Grant Program. The program was significant in part because foundation support for law schools in general has historically been modest in comparison to that received by other academic disciplines. Between 1991 and 1995, the Foundation made a total of twenty-three grants, mostly to law schools, totalling almost \$5 million. These grants supported a broad spectrum of activities in the field of legal ethics, with the primary focus being on improving methods for teaching ethics in law schools.

The Keck Foundation program represented an important commitment to an area of law that was admittedly still in the developmental stage. Unquestionably, the Foundation's support provided a strong impetus for experimentation and refinement. The program has been a major catalyst for a number of significant developments in the field over the past five years. The study of legal ethics has clearly become a more vibrant area of legal inquiry as a result.

On November 2-3, 1995, more than sixty law school deans and other legal scholars from the schools and institutions that had received Keck Foundation support met at Duke Law School to share what had been learned. This double issue of *Law and Contemporary Problems* consists of essays and articles based upon the presentations made at the conference. While the contributions will most clearly be of interest to teachers of legal ethics, they also have broader appeal. For example, some of the essays and articles discuss the continued questioning of traditional methods of legal education and the search for more effective and interesting means of instruction. The same opportunities and

struggles detailed apply across the curriculum. More importantly, the questions presented deal with more than just the teaching of ethics; they involve the struggle for defining and implementing a vision of what the legal profession is about. All lawyers, and not just those teaching and studying in law school, are faced repeatedly by self-doubts about the nature of our professionalism. At the heart of this issue is the challenge of defining a vision of legal ethics.

The Duke conference began with a presentation by Dean Paul Brest of Stanford Law School and a "Deans' Roundtable" on the future of legal education, focusing particularly on professionalism and ethics issues. Dean Brest's contribution—exhorting law schools to expand the current law school curriculum to include training in counseling, problem solving, and negotiation—also begins this issue of *Law and Contemporary Problems*. The Deans' Roundtable discussion, although not included here, was quite lively. Several deans spoke about the many resource issues now facing most law schools and how they impact ethics programs. Many deans also commented on the pressures received from some of their constituents, most notably bar officials and alumni, to bolster ethics offerings.

Following the roundtable discussion, the various Keck Foundation grantees made presentations relating to their own particular programs. Although the presentations were necessarily brief because of the high number of grantees, they were expanded for inclusion here to give the readers more complete discussions of the various topics. As editors, we asked the authors to focus on the parts of their grant programs that were the most innovative or interesting. What has resulted is a series of stories and reflections about the teaching of ethics. Unquestionably, some contributions overlap because individual participants identified common approaches and sometimes common difficulties, but, more noticeably, the collection exhibits an amazing variety of creative approaches.

The various articles have been grouped into six thematic areas. To be sure, many of the contributions are sufficiently wide-ranging in content that they could be included in more than one area. The first group of articles deals with the many grantees whose primary mission was to improve the existing required ethics course. The litany of problems associated with that course is widely accepted. Required since the mid-1970s, the course on ethics has been an unwanted stepchild in many institutions. In most schools, it was the only or one of the few required courses; its mandatory nature breeds resentment among students. Its content seemed at times to be an unseemly hodgepodge. Many of the Keck Foundation grantees challenged the conventional wisdom and experimented with ways to make the required course a vibrant offering within their schools and institutions.

The second collection of articles relates to grant programs designed to teach ethics by the "pervasive" method. A common criticism of the current pedagogical approach to ethics is that it isolates and thereby marginalizes ethics. The "pervasive" method of ethics instruction attempts to remedy this problem

by instilling ethics considerations into the existing substantive law courses, making ethics issues “alive” throughout the curriculum.

The third group of articles adopts a different approach. Rather than trying to spread ethics throughout the curriculum, these programs were designed to develop specialized, advanced ethics courses.

The fourth category describes efforts by some grantees to utilize the techniques of clinical education in the teaching of legal ethics. This particular approach focused a central question that in fact applies to many of the attempted methodologies: What are the justifications for law schools to expend the greater resources required to produce quality clinical training (or other more intensive teaching formats) in the area of ethics?

The fifth set of articles focuses on the special challenges of providing ethics education for judges. Judges are at the pinnacle of our legal system and have unique abilities to influence the character of the profession’s collective ethic. Yet, for a number of reasons, it is difficult to conduct appropriate and challenging ethics courses for judges. These grant recipients described a variety of approaches to educating judges.

The symposium concludes with a series of articles that defy easy classification, and in general are aimed toward the future of ethics education in law schools. These contributions include a first for *Law & Contemporary Problems*—the inclusion of a CD-ROM ethics database developed at Cornell Law School.

Obviously, this symposium would not have been possible without the generous support of the Keck Foundation. While the individual essays and articles appropriately credit the Foundation’s support, we wish to take this opportunity to collectively acknowledge and thank the Foundation for its efforts. Through the Foundation’s generosity, the study and teaching of legal ethics has taken several important steps forward. We hope that this double issue of *Law and Contemporary Problems* is a worthy testament to the Foundation’s efforts.

