

# FOREWORD

## Is the Bar Meeting Its Ethical Responsibilities?

HON. JOHN V. TUNNEY\*

*A lawyer should assist the legal profession in fulfilling its duty to make legal counsel available*

*A lawyer should assist in improving the legal system*

*A lawyer should represent a client competently*

Canons 2, 8 and 6 of the American  
Bar Association Code of Professional  
Responsibility

Our society depends to a large extent on lawyers to assure all citizens the protection and advantages of the law. The legal profession itself—through its largest national organization, the American Bar Association, and through most state bars which adopt or enforce disciplinary rules for lawyers—has chosen, in the canons quoted above, to impose on itself the ethical responsibility of making competent legal services available to all those who need them. Society has accepted the profession's position, and has subjected the ethical conduct of lawyers to little government interference or supervision.

But a look at the profession's performance in delivering compe-

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\* B.A. Yale University; J.D. University of Virginia; United States Senator, California. Senator Tunney is Chairman of the Senate Subcommittee on Representation of Citizen Interests.

tent and needed services shows that the lawyers' own standards are not being met. Only the wealthy can truly say they have access to quality legal services. Someone earning \$18,000 or less per year with a family of four, five or six, can hardly afford to pay \$35 to \$70 per hour for legal advice. And this situation is reflective of most people in our country. The very poor (no more than \$4800 per year for a family of four) are supposedly guaranteed legal assistance, but as Mr. Armstrong points out, most legal aid offices are terribly understaffed and, of course, those above the ridiculously low poverty line are still without access to quality legal services.

The broken promises hurt the profession as well as the public. There is terrible public cynicism towards lawyers right now and it existed prior to the Watergate break-in. A recent survey by the Special Committee to Survey Legal Needs for the American Bar Association, in collaboration with the American Bar Foundation, showed that, for example, fewer than 38 per cent of the people in this country believed that "lawyers will work as hard for poor clients as for clients who are rich and important," and 62 per cent believed that "most lawyers charge more for their services than they are worth."

The first response, no doubt, should be finding ways to prod the profession to deliver more legal services to more people, and to experiment with techniques to lower the costs and spread the financial burdens of those services. The Senate Subcommittee on Representation of Citizen Interests, which I chair, is addressing these two problems, and I believe we have been presented with some insights and helpful approaches. We have stressed the profession's own ethical responsibilities, and warned that a greater governmental role can be expected if the profession fails to meet the public's needs.

More must also be done about the incompetent lawyer and the untrustworthy lawyer, those who fail to maintain "the competence and integrity of the legal profession." The obvious cases, for the most part, can be taken care of by informal mechanisms, as Mr. Ring suggests, or by disciplinary action. The less obvious cases pose more difficult problems. The common reaction is to seek direction from bar association disciplinary committees, but as some of the thoughtful papers in this volume suggest, the entire bar discipline mechanism needs re-examination.

We need to take a fresh look at who should do the disciplining. Most lawyers argue that only they can understand and appreciate the lawyer's situation, and it is inappropriate for a layperson to

pass judgment on a lawyer's professional actions. Many critics, however, contend that leaving the discipline of lawyers exclusively in the hands of the legal profession is reminiscent of asking John Erlichman to make the definitive investigation on the White House coverup of Watergate. Much of the public views lawyers as a self-protecting group, and it bewilders me that so many lawyers refuse to understand this. Some bar associations are experimenting with nonlawyers on discipline panels. They argue—persuasively, in my view—that this reform will go a long way towards restoring public faith in the legal profession.

Any disciplinary structure, however, is limited by the shortcomings of the Code of Professional Responsibility, particularly in areas such as conflicts of interest. Some regulations are necessary to provide guidance to lawyers and to avoid totally arbitrary decisions by those who seek to punish their misconduct. The Code could be strengthened and clarified in these respects. But lawyers, of all people, should realize that a set of rules and regulations cannot possibly cover all the difficult situations in which lawyers frequently find themselves, and more important, cannot be expected to instill in lawyers the sensitivity for the painful ethical problems of the profession.

As Mr. Justice Clark points out, a major responsibility for this rests with the law schools. Like the former Justice, I have little patience with those professors who say "I'm not here to teach integrity; that's not my job." The law schools place their graduates in important, responsible positions, for which the schools take great pride (albeit on selective occasions). Our system of social justice depends upon the lawyers' appreciation for the complexities of their work, not simply on an intellectual level but on a moral and emotional level as well.

To the Tom Clarks of the world the practice of law can be an emotional experience, for they appreciate the agonizing conflicts of the profession. Can one, for instance, ever fully reconcile attacking a witness he or she knows is telling the truth, or using the testimony of a witness he or she suspects of lying? The ethical conflicts of law practice are often irreconcilable, but what is so often needed is not so much a resolution of the conflict as an appreciation that a conflict is there, and one must address it. Lawyers who turn their backs on these problems practice a blissful ignorance we cannot afford.

## CONCLUSION

The bar itself has declared that:

It is not only the right but the duty to the profession as a whole to utilize such methods as may be developed to bring the services of its members to those who need them . . . .<sup>1</sup>

Both lawyers and nonlawyers must now force the profession to meet its ethical and public responsibilities. The issue goes beyond the bar's reputation or the routine legal needs of the individual citizen, as important as those needs are. In a successful democracy, the people must have the expectation of responsive leadership, of fair treatment, of justice. Without an expectation of fair and equal justice, there cannot, and eventually will not, be a democracy.

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1. ABA COMM. ON PROFESSIONAL ETHICS, OPINIONS, No. 320 (1968).