Lawyers Examine Ethics In the Light of Watergate

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By LESLEY OELSNER

The incoming president of the American Bar Association pledged yesterday a "major thrust" in the coming year toward improving the way in which the nation's lawyers are regulated and disciplined.

The Watergate scandal, said Chesterfield Smith, the bar official, shows that "we need to do something about it."

In recent months lawyer after lawyer has either admitted to or been accused of Watergate crimes ranging from jerjury to burglary to destruction of evidence. The spectacle has jolted and embarrassed many lawyers, and the embarrassment reached a peak this week with the admission of John N. Mitchell, formerly the highest-ranking attorney in the country, that he, too, participated in the Watergate cover-up.

According to the A.B.A.'s president-elect, the Watergate affair has pointed up how poorly the legal profession has been disciplining itself.

"It's clear to me we haven't done a good job up to now of handling it," Mr. Smith said in a telephone interview from his Florida law office. "We haven't done enough."

The association will set up a special permanent unit devoted to lawyer-discipline some time in the coming year, Mr. Smith said. The discipline center is to be formally proposed to the entire membership at the annual meeting this August,

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where approval is expected. It will hold seminars, collect data, and generally assist the disciplinary units of various states.

The planning for the center started before the Watergate scandal arose and Mr. Smith did not offer it as a panacea to all the problems that the scandal has revealed.

For Watergate has raised anew the old questions of just how lawyers should be regulated. It has also raised the relatively new question of who should do teh regulating with a handful of lawyers making the suggestions, heretical to the profession; that nonlawyers should be allowed to participate.

At the moment, two laymen are on Michigan's disciplinary panel, but everywhere else, according to lawyers who study such matters, discipline is left solely to lawyers and judges.

The typical procedure is for the state's highest court to designate a bar association committee to investigate complaints, the committee then acts as a prosecutor before the court in cases in which it thinks the complaint is justified. The charges against the lawyer are keyed to the canons of ethics—the rules governing lawyers' behavior—and the lawyer is charged with violating a specific canon.

"The assumption of the present system is that the lawyers are the appropriate group to tell the community who can practice law, Norman Dorsen, a professor of constitutional law at New York University, said this week. "But isn't it true that lawyers are a specialized group, representing special interests?"

"Maybe," he said, there should be "a group of leading citizens'" to watch the lawyers "to see if they were doing a good job."

Mr. Smith, for his part, said that he believed that the final authority to discipline lawyers should remain with the courts, because, he says, "lawyers are officers of the courts." But he also thinks, he said, that there should be "input" into disciplinary proceedings not just from lawyers but from "all the people."

A study finished in 1970 by an association committee headed by former Supreme Court Justice Tom Clark is thought to have improved lawyer-discipline, but most experts believe there is still much more reforming to do.

'Scandalous' Situation

The Clark committee found what it called a "scandalous" situation across the country, with the machinery for disciplining lawyers ill-financed, poorly coordinated and generally inadequate. It recommended an array of reforms, including the creation of centralized and professionally staffed grievance committees to replace the local bar association groups staffed only with volunteers.

Henry L. Pitts, the chairman of the A.B.A. committee that is supposed to oversee the implementation of the Clark recommendations, said this week that most states have now finished reviewing their disciplinary systems and have started to set up new procedures. However, he said, a key problem remains in getting enough money to make sure the procedures are followed—money to hire lawyers to process cases for disciplinary units, for instance.

"If we had very rigorous and strong disciplinary procedures, lawyers who might otherwise be tempted would not be," he said. "But now so many of them know that nothing's really going to happen anyway." And so, he said, "they just laugh at the rules to some extent."

The problem of discipling la yers is complicated because it involves a number of different values, rights, needs and traditions. There are constitutional rights to free speech and due process; devising a procedure to weed out supposedly unfit lawyers sometimes impinges on these other rights.

Also, legal problems are generally best understood by lawyers: Giving nonlawyers the power to judge lawyers might not be fair because they might not comprehend precisely what the lawyers are supposed to do.

As bar officials and other legal experts see it, there are three stages at which the profession can improve the chances for proper behavior from lawyers. The first is law school; then the process of admission to the bar; then the post-admission stage.

Instruction in Duties

Last February the association said it would not approve a law school unless the school provided "instruction in the duties and responsibilities of the legal profession" for all students. Thomas H. Adams, the chairman of the relevant committee, said that he believed most schools already did this. Many other lawyers and professors, however, contend that schools generally do no such thing.

Many lawyers, in fact, say that the only "ethical training" they got in law school was a warning that "if you're going to do anything that gets you in trouble, do it after you get admitted, not before."

Another committee of the association has recommended that law schools and bar examiners work together to devise some type of "psychological tests" to screen out inadequate law students.

There was protest, however. "I don't know any way you can tell in advance what persons might ultimately cave in to temptation," Prof. Charles D. Kelso of Indiana University, one of those who protested, said yesterday. The plan died.

As for admission to the bar, the general procedure is for the student to take a bar exam; if he or she passes, the student is interviewed by a "character committee" of lawyers delegated by the state courts to cants. The committees require students to fill out long questionaires and furnish affidavits from past employers and sworn references from lawyers.

Bitter and Divisive

As the Supreme Court noted in 1971, the question of how much the committees can ask has been "an increasingly divisive and bitter issue" since the McCarthy era.

The rule at the moment is that "views and beliefs are immune" from questioning. The court has always insisted, though, that states do have a right to devise procedures designed to ensure that only those people of good "character" are admitted to the bar.

Once the student is admitted to practice, things are a bit easier. John G. Bonomi, counsel to the committee that processes complaints about lawyers in Manhattan and the Bronx, explained that lawyers are generally thought to have a type of "property right" after being admitted to their pffession.

The Supreme Court, in one landmark case, held that a lawyer could not be disbarred simply because he pleaded his Fifth Amendment right against self-incrimination during an inquiry by a grievance committee. In another, it said that disbarment proceedings are penal in nature and thus the attorney is entitled to such due process rights as fair notice.

Mr. Bonomi, rated by Murray Teigh Bloom in his book "The Trouble With Lawyers," as one of the country's most effective grievance officials, says that the Supreme Court rulings present some difficulties for grievance committees.

In another area, he noted that there is no procedure in which one state notities other states that it has disbarred someone. Also grievance proceedings are secret. The community thus has no idea which lawyers are suspect.