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# A Lawyer's Thoughts

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By Martin Garbus

I don't know whether Richard Nixon should be impeached. It's one thing to let him run the country, but it's another thing to let him practice law. As the facts come in, we ought to examine his conduct by standards now in use by the American Bar Association. The New York and California Bar Associations should now begin their own investigations. This is not a premature suggestion, for even if John Mitchell, Maurice Stans and others are acquitted, Mr. Nixon's conduct may be such that he should be disbarred, or, at the very least, disciplined.

The A.B.A. Code of Professional Responsibility sets forth high standards for lawyers—a higher standard than is anywhere articulated for Presidents, probably because the society expects more of its practicing lawyers than of its politicians. The preamble to the code says: "Lawyers, as guardians of the law, play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship with and function in our legal system. A consequent obligation of lawyers is to maintain the highest standards of ethical conduct."

The canons of ethics hold lawyers responsible both for the people they employ who function under their direction and control, and for the people they recommend to others to act in a legal capacity. Richard Nixon, as well as every other lawyer in this country, is responsible not only for what he actually knew but for what he should have known. He is responsible for the acts of those who use his name, and for those who act in his name. Mr. Nixon, in surrounding himself with H. R. Haldeman and John Ehrlichman, in naming Mr. Mitchell the Attorney General, and in keeping all of them in their jobs long after they should have been fired, may have violated the disciplinary rules of the various bar associations.

The code defines the responsibilities of Government lawyers. Messrs. Nixon, Dean, Ehrlichman and Mitchell, as prosecutors involved in the Ellsberg case, seem to have failed guidelines which state: "The responsibility of a public prosecutor differs from that of the usual advocate; his duty is to seek justice, not merely to convict. This special duty exists because: (1) the prosecutor represents the sovereign and therefore should use restraint in the discretionary exercise of governmental powers, such as in the selection of cases to prosecute; (2) during trial the prosecutor is not only an advocate but he also may make decisions normally made by an individual client, and those affecting the public interest should be fair to all; and (3) in our system of criminal justice the accused is to be given the benefit of all reasonable doubts."

It seems clear that the Pentagon papers' related raids and taps were used to develop information that might have been used to embarrass Dr. Ellsberg on his cross-examination. The Government may have felt that if it could develop these facts, Ellsberg would not have testified.

The alleged conduct by Messrs. Mitchell and Stans in the Yesco case raises many other ethical questions. A lawyer cannot misapply funds—use dollars for one purpose that are given for another. Nor can a Government lawyer, such as John Mitchell, accept campaign contributions. If a lawyer accepts a gift or contribution, the American Bar Association recognizes he is peculiarly susceptible to the charge that he failed to act professionally.

If, after all the facts are in, the A.B.A. and California bar determine that Richard Nixon has failed to meet the standards of his profession, he should be disciplined or disbarred.

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