

A Mission for the Bar Association

In the light of Watergate it may be considered no more than a common cliché to point out that the legal profession has failed in its sworn duty to uphold the law.

Certainly it will be considered incredibly naive to suggest that the American Bar Association do something about it. Nevertheless, an ashamed lawyer at least ought to be allowed to wonder out loud whether the legal profession has not acted so badly and has not dropped so far in public esteem as to warrant some dramatic and drastic action by the American Bar Association — such as scrapping its entire 100-page business-as-usual agenda at its meeting here and devoting the entire proceedings to considering remedies for the present crisis in the profession.

Most lawyers, I believe, are ashamed of what they have seen on television and in the press these past weeks: a lawyer President suppressing facts needed to enforce the laws he is sworn to uphold; a former Attorney General describing discussions of illegal conduct in his office at the Department of Justice; the President's own personal lawyer flitting around the country arranging secret payments to known criminals; an ex-counsel to the President detailing his role in obstructing justice; a lawyer top assistant to the President defending the legality of burglary; a lawyer acting FBI Director destroying material evidence. And this, sadly, is only the tip of the iceberg. What of the lawyers who developed, implemented and defended the administration's program of selective law and order, a program attacking street crime while endorsing the wholesale violation of other laws. What of the administration lawyers engaged in already-adjudicated illegality in refusing to enforce civil rights laws, in impounding funds for social programs, in dismantling OEO; what of the plan to "screw" political opponents with IRS investigations, and heaven knows what else; what of the legally-groundless bombing of Cambodia going on at this very moment.

The able president of the American Bar Association, hard put for an explanation of all this, raised the question "whether lawyers who participate in government, at policy and administrative levels, have not lost that professional detachment from their clients' affairs that makes it possible for them to be objective — whether they are not, as it were, too easy victims of the philosophy that winning an election is all-important." But one can properly question Mr. Robert Meserve's assumption that government lawyers are really so very different from those in the private sector; there is no evidence whatever that the latter have more "professional detachment from the clients' affairs" or are less imbued with the philosophy that winning is "all-important." Indeed most lawyers carry their principles and habits from private practice into the government and not the other way around.

The problem is far more basic. Somewhere along the line, from law school to admission to the bar and on through the practice of law, something has gone wrong. Somewhere considerations of the public interest and support for the rule of law dropped out of the vision of too many lawyers. Somewhere the clients' interest became identical with right even to the extent that the end justified any means. Just look at the current scene: corporate lawyers attacking every governmental regulation that is in the interest of the consumer, condoning and defending if not participating in price fixing,

representing the management of companies rather than their stockholders; "superlawyers" lobbying to defend and aggravate tax loopholes while obstructing every social program for want of

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funds; lawyers for unions in obvious conflict of interest furthering the regimes of corrupt incumbent officers who continue to oppress the members whose dues pay the lawyers. And all this and more is ratified by legal disciplinary committees, staffed from the very firms that engage in these practices, who look the other way and spend their time investigating overzealous representation by lawyers defending individual rights and minor infractions by impoverished members of the bar.

The American Bar Association has not been the defender of the public interest over the years. For example, in the old McCarthy days, it yielded to the temper of the times and even supported the excesses of the House Un-American Activities Committee before the Supreme Court and urged the overruling of President Truman's courageous veto of the now practically-defunct Internal Security Act of 1950. Its record in civil rights was no less ignominious; while purporting to speak for all lawyers, it continued its color bar long after segregation had been outlawed by the courts in other areas of public participation. Its support of the confirmation of Clement Haynsworth and Harrold Carswell is equally well known. But, despite this past record, there are many who feel the situation is changing rapidly and that the American Bar Association is dedicating far more of its energies to the public interest today than ever before. This 1973 convention is a rare op-

portunity for the association to prove that dedication.

The present crisis of confidence in the legal profession presents the American Bar Association with the opportunity and the obligation to demonstrate its new vitality. The simple act of canceling the agenda and focusing every session of every committee or section of the association on the present crisis would evidence to the public that legal business-as-usual is over and that lawyers are determined to clean their own house. Beyond this, there are many subjects to be discussed far into the night at a time when so many lawyers come together: Have the law schools adequately taught the public interest role of the lawyer in society and his unique responsibility for the rule of law in our country? Has there been adequate discussion of this role in legal writings beyond law school? Is there not some way to spell out standards of proper legal conduct in simple terms and to hold the profession to such standards? Have legal disciplinary bodies sought to implement the spirit of the public interest and the rule of law or have they too often exhibited a contrary view? Have the thousands of young lawyers who want to make a career of public interest law been given the support they deserve and is there any way they can be propelled into the leadership of our profession? A public airing of these and other matters would at least evidence the bar's realization of the crisis it faces and its determination to start on the road back.

On Law Day each year lawyers applaud John Adams for his defense of British soldiers, Clarence Darrow for his support of an unknown Tennessee teacher and Charles Evans Hughes for his struggle on behalf of Socialist legislators. The task ahead is to make this image of the public-spirited few a practical reality for the many. The American Bar Association has a historic opportunity to begin the movement in that direction.