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Watergate Heightens Confusion

Over Lawyer's Proper Role

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The American Bar Association is meeting here amid widespread concern and confusion over the proper role of the legal profession in today's society.

Is a lawyer just a "mouthpiece" or hired gun, ethically bound only to the interest of his client? Or does he have another duty to the public and to the courts to pursue broader ends of justice?

Does Watergate confirm the darkest suspicions of citizens who think all lawyers are scoundrels? How will lawyers measure up to the challenge of uncovering buried truths while preserving the rights of the accused?

These are some of the questions repeatedly asked as 8,000 lawyers gather for the ABA's 96th annual meeting this week, its first here since 1960. The questions, only some of which are on the official agenda, are answered with a mixture of worry and righteous indignation.

The indignant ones deny that Watergate truly raises ethical questions for the profession. To one bar leader from South Carolina, listing the number of lawyers now in trouble with the law is meaningless.

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"Few of these men are engaged in the practice of law," says this official. "Most of them have been involved in simple violation of the law" rather than mere breaches of ethical precepts, says a St. Louis bar leader. He asks what good it will do to beef up law school courses in ethics, a subject long downgraded in legal training.

A leader of the Norfolk, Va., bar association bristles at a local editorial that went so far as to suggest that even counsel for the accused in the Watergate investigations are "at the trough" like other members of the trade.

Such talk angers both liberals and conservatives in the organized bar. One attorney who represented Communists in congressional probes for subversives two decades ago privately doubts whether he can refuse a recent request to represent one of the top targets of the investigations by the Ervin committee and Special Prosecutor Archibald Cox. "I've been told I haven't the guts to turn down this case, whatever my feelings about the Nixon administration," says the lawyer, "and I guess that's true."

What can the organized bar do about the slipping public image of lawyers? At this stage, not much, outgoing ABA president Robert W. Meserve admits. It can continue to press for stronger state bar disciplinary procedures, but suspension or disbarment is chiefly a function of the courts, beyond the powers of most local bar associations, the majority of which are private organizations.

Meserve has taken one step of possible long-range significance: the appointment of a task force on the problem of "politicized" justice at the federal level. The task force, headed by William B. Spann Jr. of Atlanta, has the clout to carry the 170,000-member ABA into a study of improper political influences in the Justice Department, the Internal Revenue Service and many other federal law enforcement agencies.

In typical ABA fashion, the study will be "balanced." Its keynote will be that politics has always infested the Justice Department, as evidenced by four postwar U. S. Presidents who named campaign managers as Attorney General.

Meanwhile, the lawyers in Watergate trouble are themselves entitled to due process of law, not only before facing criminal penalties, but also in the threatened loss of their licenses to practice law. Even the power to strike attorneys from ABA membership rolls ordinarily must await disbarment proceedings in the members' states. The only lawyer disbarred so far due to Watergate, G. Gordon Liddy, turned out to be an ABA dropout for nonpayment of dues.

What ethical guidance can the bar provide now? Lawyers can ask the opinion of the ABA's standing ethics committee, but the general public must scratch for answers to such questions as whether an attorney must sit idly by while his client commits perjury. (Most lawyers will answer that the first thing to do is try to persuade the client to tell the truth and if that fails, the lawyer should quietly withdraw from the case.)

Lawyers here point out that many pointed ethical questions were raised long before Watergate arose.

The Securities and Exchange Commission is taking the position that attorneys in corporate stock dealings have a public obligation to disclose revevant inside information that might give pause to investors and potential corporate merger partners. If the SEC is right, lawyers, once able to keep a safe distance from their clients so as to give objective legal advice, will be assigned a policing function.

Such concepts are the stuff of a counter-convention at George Washington University, several blocks from the big hotels swarming with ABA members and their families. Sponsor Ralph Nader and his Corporate Accountability Research Group are asking the same ethical questions, just as they have for several years.

So strongly did one band of Naderites feel about a lawyer's social obligation that two years ago they picketed the office of Wilmer, Cutler & Pickering because of the law firm's effectiveness in representing General Motors here. Partner Lloyd N. Cutler counterattacked with a charge of "McCarthyism" —by which he meant guilt by association between a lawyer and his client.

The Nader convention has been carefully scheduled to avoid conflict with such feature ABA events as the annual "State of the Judiciary" address by Chief Justice Warren E. Burger on Monday. Although they differ with the Chief Justice over priorities for public-interest litigation, the Nader convention might draw its text from a Burger dissent only a month old.

"The concept of a lawyer as an officer of the court," said Burger, "has sustained some erosion over the years at the hands of cynics who view the lawyer much as the 'hired gun' of the Old West. In less flamboyant terms the lawyer in this relation came to be called a 'mouthpiece' in the gangland parlance of the 1930s. Under this bleak view of the profession the lawyer, once engaged, does his client's bidding, lawful or not, ethical or not."