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ETHICS IN PUBLIC LIFE—A CHALLENGE TO THE LAWYER

BENJAMIN M. BECKER

No client, corporate or individual, however powerful, nor any cause, civil or political, however important, is entitled to receive . . . service . . . involving disloyalty to the law whose ministers we are . . . or corruption of any person or persons exercising a public office or private trust, or deception or betrayal of the public. . . . But above all a lawyer will find his highest honor in a deserved reputation for fidelity to private trust and to public duty, as an honest man and as a patriotic and loyal citizen.—Chicago Bar Association, Canons of Professional Ethics, No. 32.

THE matter of ethics in public life, which once was little more than an interesting topic for academic debate, has today become one of the most crucial problems facing the American people. Never before has government played so vital a role in the lives of so many people. Never before has the fate of the free peoples of the world been so dependent upon the moral and political leadership of a democratic nation. The daily welfare of every American and the final outcome of the world struggle for the minds of men are thus affected, for better or for worse, by the kind of government which we, as a democratic nation, provide for ourselves.

It has been said that when nations mature, they grow tolerant of evil. "They accept as a simple fact of life the irresponsibility of public officials who condone corruption and who play favorites as they administer the nations' laws. It was so in the brightest and rottenest days of the Roman Empire and it has been so ever since."¹ With our nation mature there can be no doubt that moral corruption in American public life threatens us with the same decay which befell that empire.² The fate of Rome must not be ours!

No person in our society has more cause to be concerned with the

¹ Blair Bolles, *How to Get Rich in Washington*. New York: W. W. Norton & Co., 1952, p. 3.

² See statement of Roman Catholic cardinals, arch-bishops and bishops in U.S., as reported in *Chicago Sun-Times*, p. 2 (November 18, 1951).

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problem of ethics in government than the lawyer.³ By training and experience he has come to understand the problems of the relationships between individuals and groups. The lawyer has a special responsibility in society. If he holds public office or is employed by government he must adhere to the highest standards of public service. As counsel for persons or organizations he is frequently in contact with governmental bodies. The lawyer must be concerned with the ethics of both his client and the officials with whom he deals. Moreover, as a citizen he is charged with a special responsibility to apply his unique abilities towards the attainment, on every level, of government which is honest, efficient and dedicated to the service of the people.

A. THE CHALLENGE

What is the nature of the problem which faces us as citizen-kings in this democracy of ours? It is a problem of many aspects, only a few of which can be noted here.

First, it is indisputable that there is a serious lack of morality and simple honesty among many elected officials and employees of government. Revelations of the Kefauver Committee, which indicated the nationwide connection between crime and politics, the King Committee investigations of the Bureau of Internal Revenue and the resultant convictions of high officials, the Fulbright investigation of the Reconstruction Finance Corporation, and the so-called "five percenter" investigations by a committee headed by Senator Hoey of North Carolina have all disclosed the stark facts of illicit political influence and dealing in national affairs. Here in Illinois the cigarette and horsemeat scandals on the State level and the evidence of "pay-roll padding" and other improprieties by local officials leaves no doubt that the issue of ethics in public life is very much with us. So it is too, on the local level, where no documentation is needed of recurrent charges of the sale of favors and political influence.

Former President Herbert Hoover has said: "There is a dangerous weakening of morality and ethical standards in public life generally, the very area in which we should expect to find integrity and leadership on high principle. Without improvement in the minds and hearts of men, law and institutions are not enough to prevent deterioration in political behavior."⁴

³ See *The Law and Public Service*, an address by William O. Douglas, Associate Justice, U.S. Supreme Court, 26 A.B.A.J. 633, 634 (1940).

⁴ Views set forth in letter to Chairman Gillette of Senate elections subcommittee studying whether changes are necessary in laws relating to political elections, Chicago Daily Tribune § 1, p. 5 (October 3, 1951).

It should not be supposed, however, that such corruption is a new phenomenon on the American scene. Official dishonesty in the Colonial period was said to have "attained a known science, like arithmetic or geometry."⁵ During the most crucial days of the Revolutionary War army officers were cashiered for drawing more provisions and pay than they had men in their company. The great patriot, Samuel Chase, while a member of Congress, tried to corner the supply of flour. So bad were conditions that George Washington was driven to say, "Such a dearth of public spirit and want of virtue, such stock-jobbing and fertility in all the low arts to obtain advantage of one kind or another, I never saw before and pray to God I may never be a witness to again. I tremble at the prospect. Such a dirty, mercenary spirit pervades the whole that I should not be surprised at any disaster that may happen."⁶

What appears to have been a classic in political shakedowns occurred when Daniel Webster, one of the great lawyers and orators of his day, was representing the Second Bank of the United States in seeking a renewal of its charter, against the vigorous opposition of President Jackson. At the climax of the struggle, Webster, on December 21, 1833, wrote to Nicholas Biddle, president of the Bank, as follows:

"Sir:—Since I have arrived here I have had an application to be concerned professionally against the Bank which I have declined of course, although I believe my retainer has not been renewed, or refreshed as usual. If it be wished that my relation to the Bank should be continued, it may be well to send me the usual retainers."

Needless to say, the retainer was "refreshed."⁷

It was subsequently disclosed that in 1837 loans had been made by the Bank to members of Congress, editors of newspapers, and officers of the general government. There were at least fifty-four such men on the list, including both Henry Clay and John C. Calhoun, as well as numerous former cabinet members, three vice presidents of the United States and several of the leading editors of the country.⁸

⁵ William E. Woodward, *A New American History*, New York: Farrar & Rinehart, 1936.

⁶ Estes Kefauver, *Past and Present Standards of Public Ethics in America: Are We Improving?*, *Annals of American Academy of Political and Social Science*, Vol. 280, March, 1952, p. 3.

⁷ Paul H. Douglas, *Ethics in Government*, Cambridge: Harvard University Press, 1952, p. 15.

⁸ *Ibid.*

Some feel that there has been an appreciable long-time improvement in the level of political morality.⁹ Perhaps! Maybe officials of our day have improved on Daniel Webster's "refresher" technique. But whether or not there has been an improvement is of little importance because, as former Governor Adlai Stevenson remarked, "One corrupt public official is one too many."¹⁰

An equally important aspect of the situation is the often overlooked fact that there is also much honesty in government. The legislator, administrator or junior clerk who unobtrusively disdains favors and works conscientiously year after year is not news and is often forgotten. Every lawyer who has dealt extensively with governmental agencies has encountered the secretary or clerk who makes a special effort to help his client, the Treasury Department officer who insists on buying his own lunch or the official who has the courage to stand upon his convictions in the face of a hostile audience or press. There is no reason to believe that the rate of crime among federal employees at any level is any higher than that among any comparable group in private life.

The real difficulty is that too many are prone either to close their eyes to the corruption which they know exists or to judge all governmental workers by sensational charges which are made against a few. Too often we make such blanket judgments upon the basis of political partisanship.

The third fact which poses a serious challenge today is the difficulty which is met in obtaining or retaining good men for public service. Too often the most capable men leave government service because of disgust with the absence of high standards among fellow workers or because of unfair and irresponsible slurs upon their integrity. Top elected officials have found it increasingly more difficult to recruit into public service high caliber personnel from private life. Another factor, which is perhaps of equal importance, is the failure to make it financially possible for the honest man of limited means to seek public office, or to accept appointment in administrative branches of government.

For all of these challenges, certain solutions may be self-evident; but they hardly suffice.

To eliminate plainly illegal corruption and dishonesty we need effective investigation with more vigorous enforcement of existing

⁹ *Ibid.*, p. 18.

¹⁰ 33 U.S. News & World Report 44 (July 11, 1952).

laws. The bribe taker and giver, the parties to the sale of any personal favor, the links in the unquestioned chain of organized crime and politics—all of these must be speedily exposed and punished. The answer is not the enactment of new and stricter laws, though a review of existing national and state legislation relating to corruption in government may well uncover insufficiencies. It requires, rather, an inquiry as to how much beyond the requirements of the law people must go to formulate adequate guides to conduct in public life.

To protect that overwhelming majority of honest and conscientious public servants, there is needed a restatement, and fuller understanding, of the traditional American standards of fair play, including greater emphasis upon the presumption of innocence, procedural safeguards for the rights of individuals called before investigating committees, increased self-restraint by investigators, press and public alike and, perhaps, a solution of the old problem of giving the accused a forum equal to that of his accuser.

To retain and secure the highest caliber of public officials, we need, in addition to the above, salary scales and levels to make government service attractive in its competition with the business world and an answer, if one can be found, to the high cost of campaigning for public office.

B. THE NEED OF A STANDARD

All of what has been said leaves unanswered a very special challenge—a challenge which can best be illustrated by recent developments on the national scene.

It will be remembered that the 1952 presidential campaign reached its dramatic climax when it was suddenly revealed that contributions had been made to a "trust fund" by certain California interests and made available to Richard Nixon, the Republican nominee for the office of Vice-president, while he was serving in the United States Senate. It was subsequently revealed that Adlai Stevenson, the Democratic presidential nominee, had administered a fund for the use of some of his appointees. Thereafter, the nation earnestly debated whether either of the candidates had been improperly influenced by these activities. Although there was no real evidence of improprieties by either man, most people, including far too many lawyers, hastily concluded that one man was right and the other wrong, in most cases on the basis of political affiliation.

Most of the debate missed the crux of the issue. If political favoritism was sold in either case, it was wrong both morally and legally. But it is preposterous to suggest that this question of *fact* could possibly be determined outside a court of law. On the other hand, there was an amazing minimum of public discussion of the entirely separate question of *morals*, as to whether or not the agreed facts indicated improper conduct by either party. Assuming that Nixon did not appropriate any of the money for his personal use and that he was not influenced in any manner in performing his functions as a United States Senator, was the existence of the fund nevertheless improper? Assuming that Stevenson's assistants did not know the source of the money which they received and that they were not influenced in the performance of their duties thereby, was it nevertheless morally wrong for them to receive money from private sources?

The same question of ethics was raised again in the debate over the stock holdings of certain of President Eisenhower's appointees. No good can come from speculation over whether or not any given officer will demonstrate favoritism because of his personal interest in a private firm with which he may have to deal, for discrimination against such an interest could be just as harmful to the nation's welfare as outright favoritism.

The difficulty is that honest minds can and do differ as to what is morally and ethically right. The public official who strives conscientiously to do right, unfortunately has no objective standard by which to judge his actions.¹¹ The general public, too quick to take sides in a partisan dispute, concludes that a particular activity is right or wrong because it trusts or distrusts the individual or his party.

What we need is a single standard, at least an accepted guide, or code of ethics to serve both the public and its servants.

C. THE UNANSWERED QUESTIONS

Such a standard can hardly be prepared by any single individual. What is needed is an intelligent discussion of the problem by representatives of every walk of life. We need agreement, so far as it can be achieved, on some of the broader and more basic standards of

¹¹ In time the public office holder, with inner conflicts and in an effort to rationalize, begins to think as did George Washington Plunkitt, a Tammany chief who, a half century ago said: "There is an honest graft and I am an example of how it works. I might sum up the whole thing by sayin', 'I seen my opportunities and I took 'em.'" Chicago Sun-Times, p. 21 (February 5, 1952).

conduct. We need a crystallization of existing agreements and conflicts.¹²

It may be appropriate to state, without attempting to resolve, some of the more urgent problems upon which disagreement now exists and which require consideration.

(1) *Disclosures by Candidates*

Does the public have the right to determine whether a candidate is "as clean as a hound's tooth"? In the recent presidential campaign some of the candidates voluntarily revealed their income tax returns for a number of years back; other candidates refused to do so on the ground that this required an unreasonable invasion of their privacy.

What of a candidate's sources of income, stock holdings, and past political affiliations? A decision is needed as to whether it is ethical to refuse to disclose such data, and, if it is to be disclosed, whether it should be made public or merely reported in confidence to a special board or commission.

(2) *Contributions to Candidates*

Few problems pose a greater threat to our democratic processes than the high cost of election campaigns. It has been reliably estimated that the "rock-bottom" cost of the 1952 presidential election was more than \$32,000,000.00.¹³ A single radio-television broadcast cost one party \$267,000.00.¹⁴ More than \$1,200,000.00 was spent by one of many groups to secure the presidential nomination of a single candidate.¹⁵ Senator Douglas has estimated that the minimum cost of a successful campaign for the United States Senate in a fairly large state is between \$150,000.00 and \$200,000.00 and that actually such costs have been far greater.¹⁶ Until this situation is remedied good

¹² A bill to establish a commission on ethics in government for the purpose of holding public hearings with a view towards the drafting of such a standard was introduced in the 82nd Congress and recommended for adoption by a subcommittee headed by Senator Paul H. Douglas of Illinois. It was subsequently pigeonholed. See reports of subcommittee of Committee on Labor and Public Welfare, U.S. Senate, on S. Con. Res. 21 and S. J. Res. 107, 82nd Cong., first sess. 1951. A proposal to establish a commission for similar purposes was offered to the Chicago City Council by the author.

¹³ N.Y. Times, pp. 1, 16-17 (Dec. 1, 1952).

¹⁴ Report of Special Committee to Investigate Campaign Expenditures, House of Reps., on H. R. 588, 82nd Cong., 2nd sess. (Jan. 3, 1953), p. 47.

¹⁵ Hearings, Special Committee to Investigate Campaign Expenditures, House of Reps., on H. R. 588, 82nd Cong., 2nd sess., (Dec. 1-5, 1952), p. 111.

¹⁶ Douglas, *supra*, note 7, p. 67.

men without substantial private funds will be forced to rely upon contributions. Inevitably they will be offered substantial contributions by vested interests which expect to get something in return. The honest candidate is sorely pressed to determine the line of propriety in accepting such offers and would surely welcome an objective measure of the amount and source of such offers which may properly be accepted. The plan evolved by Beardsley Ruml, who appealed for five dollar contributions from persons interested in Governor Stevenson's election, is a step in the right direction, for it is inconceivable that an elected official would deem himself subject to influence by so small a contribution. But surely something more is needed.

(3) Disclosure of Income by Public Officials

Salaries of public officials are deplorably low—more frequently they are insufficient for living at standards normally expected of public officials, and certainly not enough to defray the cost of election or re-election. To require all such officials to terminate their outside sources of livelihood and business interests would close the door to all but the wealthiest. Yet it cannot be suggested that it is desirable to have a public official pass judgment on a matter in which he is directly interested financially. Is it enough to make exceptions in the case of men like Charles E. Wilson, whose integrity is above question, to permit retention of an interest in a major defense contractor, or should it be found undesirable as a general rule?

Equally important is the question of the gratuities which are invariably tendered to every public official. Here we have the basic problem of the Nixon and Stevenson cases. Is it not possible to distinguish objectively the substantial "gifts" of the oil interests and would-be contractors with the state from the inexpensive presents of merchandise which are so often sent to officials by ordinary citizens having the best of intentions?

(4) Conflicting Interests of Public Officials

A related but distinct problem is posed for the lawyer and business man in public service. The professional ethics of the bar forbid the former to represent any person or organization which is actively interested in the promotion or defeat of any matter pending before him as a public official.¹⁷ But may such a lawyer represent the client

¹⁷ Chicago Bar Association, Canons of Professional Ethics, No. 49.

in matters unrelated to a pending issue, at least if he refrains from exercising his legislative or administrative powers with respect to such client? How is the lawyer to know when such interests may conflict?

And what of the business man—may he sell insurance or other services or products to persons who are interested in matters pending before him as a public official? Every legislator knows that he should not accept a fee which is in consideration of a political favor. But how is he to know—and how is the public to know—which transaction is made at arm's length and which is not?

(5) Other Motivation in Performance of Official Functions

If a candidate is elected to public office after having made rash commitments to special interest groups in the heat of a campaign and subsequently, upon mature reflection, decides that performance of the promise is contrary to the public interest, is he morally bound to carry it out? On the other hand, is it proper for a candidate to make promises which he knows, at the time they are made, will never be kept?

These questions suggest a problem which is as old as representative government itself and one which has been vigorously debated by scholars of every era—namely, whether an elected official's primary duty is owed to all of the people or only to that segment which was responsible for his election. This problem has taken on critical importance recently in view of the increasing magnitude of governmental operations and the growing influence of small economic groups in the outcome of elections.¹⁸ At the time of this writing the outstanding case in point is the pending controversy over the disposition to be made of the so-called "Tidelands," or off-shore oil interests. Regardless of the merits of the various sides of the controversy and apart from the wisdom of the candidates in committing themselves during the campaign, it would seem fair to observe that the consequences to the nation of any decision which may be made are far too great to permit its determination solely on the basis of political commitments.

(6) Conduct After Leaving Office

The story is told of John J. McCloy, who after winding up his remarkable service at the War Department, was offered a Washing-

¹⁸ See article by Thomas L. Stokes, Chicago Sun-Times, p. 40 (Dec. 4, 1952).

ton law partnership with a guaranteed income of \$350,000.00 per year. Innumerable senators, representatives and administrative officials have reaped substantial incomes in dealing with the government after retiring from their official positions.¹⁹ Unquestionably, most of these persons have conducted themselves honorably and honestly in such capacities, for the training and experience of such men can be invaluable to those who must deal with the government. But improper influence has also been sold. The lawyer is forbidden to accept any employment in connection with any matter which he has investigated or passed upon while in public office or employ,²⁰ but how often is this rule violated, directly or indirectly? And what of the business man, the economist, the public relations expert, the "Washington representative" and the countless other fields for post-governmental profit?

The foregoing list is only a beginning. One may add countless other problems which must also be resolved. But it does seem sufficient to demonstrate that good intentions are not enough—that one man's conscience may well be the next man's concept of sin.

D. THE JOB TO BE DONE

There can be no doubt that the inherent evils of corruption and low standards of conduct in government require immediate and vigorous action on the part of every citizen. In the words of a distinguished group of Roman Catholic leaders in the United States, "The principle that 'anything goes' simply because people are thought not to expect any high degree of honor in politicians is grossly wrong. We have to recover that sense of personal obligation on the part of the voter and that sense of public trust on the part of the elected public official which give meaning and dignity to political life."²¹

Equally important, however, is the destructive effect of official immorality upon the public at large. As Senator Paul H. Douglas has said, "The moral effect of example is . . . the most important reason why we should raise the standards of politics and the behavior of our public officials."²²

There is no limit to the role which the lawyer can play in the task of restoring faith in government.

Lawyers in government must resolve to govern themselves by the

¹⁹ See Blair Bolles, *supra*, note 1.

²⁰ Chicago Bar Association, *Canons of Professional Ethics*, No. 36.

²¹ *Supra*, note 2.

²² Douglas, *supra*, note 7, p. 20.

highest standards of ethical conduct, and must demand the same conduct of their associates and subordinates. At the same time all of us must resolve to take a more active part in politics. A recent poll by the National Opinion Research Center disclosed that five out of every seven Americans believed it impossible for a professional politician to be honest, and only eighteen percent of America's parents were willing to let their sons enter political careers.²³ Surely this is a shocking indictment of the failure of respected and responsible leaders in every community to participate in their government.

Lawyers who deal with the government must re-examine their attitude towards the role which they may properly play on behalf of their clients. It is one thing to give the tax evader the best possible representation after the offense has been committed; it is quite another thing to knowingly participate or acquiesce in the offense itself. For every person corrupted, there is a corrupter. The business man may seek a contract, a concession, a lower tax assessment. Often he is ready to offer a price; too often his lawyer is the intermediary. The executive who hastens to fire a disloyal purchasing agent is often the first to offer the public official a consideration for political favor. He who worships the principle of fair trade in his own business is too often ready to disregard every standard of ethics in dealing with government. Many of those who stress quality of service and product in their sales promotions, are ironically tolerant of inferior quality, less than mediocre service, and outright dishonesty in public service.

The business man and his lawyer argue that they must "deal" with the politicians for self-preservation. Is that not feeding fuel to the fires of graft, corruption and dishonesty in government? Let them fight as aggressively for good government as they fight for sales, and they will assure not only a better deal for business but a better deal for the purchaser of their products as well. Instead of paying tribute for favors and special privilege, let the business man give tribute to good government. Otherwise the business man and those who represent him must bear a large part of the responsibility for the lack of ethics in public life.²⁴

²³ Hubert H. Humphrey, *Ethical Standards in American Legislative Chambers*, *Annals of American Academy of Political and Social Sciences*, Vol. 280, March, 1952, p. 51.

²⁴ Robert E. Wilson, Chairman of the Board, Standard Oil Company of Indiana, while commending the ethical standards of business in general, recently declared that "there is one point on which we business men can properly be criticized . . . lack of courage in leading the fight against dishonesty and demagoguery in city, state and nation." *Chicago Daily News*, (June 3, 1952).

The lawyer as a citizen has a unique opportunity and a heavy responsibility to continually strive for improvement in the matter of morals and ethics in public life. He must encourage and assist in the vigorous enforcement of the law; he must strive constantly for the elimination of corrupting influences and the establishment of new incentives to honesty. As a molder of public opinion he must be the constant advocate of the welfare of all the people, not of just his own economic group, or of the client he represents.²⁵

CONCLUSION

It is perhaps trite to say that ours is a government not of men, but of laws. Yet it is interesting to note that while lawyers have never played a significant part in any of the world's great dictatorships, they have been pre-eminent in the historical development of our nation. Twenty-six of our presidents have been lawyers. More than fifty-seven percent of the members of the two houses of Congress today are former lawyers or judges.²⁶ Of the small handful of men who drafted our Constitution, fifty-one were lawyers. Within the framework of that great document we have been able, largely because of the work of lawyers as judges and as advocates, to avoid both tyranny and anarchy without a sacrifice of our basic civil liberties.

Our nation can continue to fulfill its heritage as living proof that government of, by and for the people is good government only if the bar shoulders its full share of responsibility in the moral and ethical leadership of our time.

²⁵ See Thomas E. Dewey, *The Lawyer in a Changing World*, 16 *Temp. L. Q.* 1 (1941).

²⁶ *Congressional Quarterly, Weekly Report (Supp.)* Vol. XI, No. 1-A (1953) pp. i-xii.