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From the Editors

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From the Editors

While I have been serving as President of [the Omaha Bar] Association I have come into contact with the general public in many ways and I have had the opportunity to listen, and I have made it a point to listen. I regret to inform you I am shocked by the attitude of the average person toward our profession. I can only say bluntly it is not good.¹

In the midst of the recent widespread and justifiable criticism of the legal system the lawyer's reputation has undoubtedly suffered. Much of this criticism should not be placed on the legal profession. Society has refused to accept the burden of maintaining an efficient system of justice and the consequent inadequate law enforcement agencies, overcrowded court dockets and outdated penal institutions are too notorious to require citation. The attorney cannot solve these problems without the cooperation of the public.

Besides the modern problems in administering justice any unpopularity suffered by the legal profession may be caused by the nature of the services it performs. Many laymen regard the law as shrouded in mists of legal logic which make it and those who deal in it totally incomprehensible and not to be trusted. The adversary system which our forefathers adopted as the most effective method of finding the truth requires that the lawyer zealously represent his client within the bounds of the law regardless of his personal feelings about the propriety of the client's conduct.² The exercise of this duty may be misunderstood by the layman as a lack of principle or "twisting the truth." Lawyers deal with

¹ Marer, *Address of Welcome, Proceedings of the Seventy-First Annual Meeting of the Nebraska State Bar Association*, 50 NEB. L. REV. 258-59 (1971).

² "Regardless of his personal feelings, a lawyer should not decline representation because a client or a cause is unpopular or community reaction is adverse." ABA CODE OF PROFESSIONAL RESPONSIBILITY, *Ethical Consideration 2-27* (1969) (footnote omitted). "The professional responsibility of a lawyer derives from his membership in a profession which has the duty of assisting members of the public to secure and protect available legal rights and benefits. In our government of laws and not of men, each member of our society is entitled to have his conduct judged and regulated in accordance with the law; to seek any lawful objective through legally permissible means; and to present for adjudication any lawful claim, issue, or defense." *Id.*, *Ethical Consideration 7-1* (1969) (footnotes omitted).

the most cherished possessions of society: life, liberty and property. The stakes are great, and whenever one litigant is victorious another is bound to be dissatisfied with his or his opponent's counsel, or both. An unsuccessful client is unlikely to attribute his defeat to his own conduct. Some of the attorney's "bad image" may actually be jealousy, for the attorney is educated, glib, and possibly prosperous.

But the very complexity of the law which makes it easy for the public to misunderstand the lawyer places upon him the obligation to improve the law.

By reason of education and experience, lawyers are especially qualified to recognize deficiencies in the legal system and to initiate corrective measures therein. Thus they should participate in proposing and supporting legislation and programs to improve the system, without regard to the general interests or desires of clients or former clients.³

In the field of torts common lawyers developed the doctrine that one who holds himself out as an expert should be held to a higher standard of care than an average man.⁴ The doctrine would seem to rest upon the proposition that if an individual induces others to rely on his asserted expertise he is at fault for a failure to live up to that standard. The reason for this rule of torts, developed by men of the law to regulate the conduct of society's affairs, would seem to apply in a different context to the lawyer's own conduct as a public servant. In a democracy each citizen has the obligation to insure the continued operation of his system of laws. Since members of the legal profession are experts in law and society apparently relies on their legal skills, they should be held to a higher standard in performing their obligation to improve the law. Because of the importance of legal questions in American society the attorney has greater civic responsibility than his counterparts in nonlegal pursuits.

This higher responsibility of the legal profession dictates that it should be committed to untying the snarls in the legal system and the substantive law and improving its public image. Leaders of the Bar have consistently urged that individual lawyers' efforts

³ *Id.*, *Ethical Consideration* 8-1 (1969) (footnotes omitted). See generally *id.*, *Canon 8*: "A Lawyer Should Assist in Improving the Legal System."

⁴ Seavey, *Negligence—Subjective or Objective?*, 41 HARV. L. REV. 1, 26 (1927).

are necessary if these undeniably serious problems are to be solved.⁵ Those of us who are preparing for legal careers must share this concern as well.⁶

The legal profession is in the unfortunate position of being blamed for many societal ills which it cannot correct. But the fact that there are not easy answers to these problems will not excuse the attorney's duty as a public servant to improve his profession and the administration and quality of justice to the extent he can.

⁵ Adams, *Address of the President, Proceedings of the Seventieth Annual Meeting of the Nebraska State Bar Association*, 49 NEB. L. REV. 304 (1970); Segal, *The Higher Calling of the Bar*, *id.* at 332; Newton, J., *Remarks*, *id.* at 456; Baird, *Address of the President, Proceedings of the Seventy-First Annual Meeting of the Nebraska State Bar Association*, 50 NEB. L. REV. 260 (1971); Jaworski, *The Challenge and the Response*, *id.* at 282. See *Interview with Chief Justice Warren E. Burger*, U.S. NEWS & WORLD REPORT, Dec. 14, 1970, at 32 *passim*.

⁶ "I think most lawyers and most judges . . . have long felt that there were terrible gaps in the training of . . . recently graduated lawyers in terms of their attitude toward professional responsibility. And this can best be taught when these students are learning their profession." *Interview with Chief Justice Warren E. Burger*, *supra* note 5, at 34.