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ABA House of Delegates
Dallas, Texas
August 12, 1969

Lewis F. Powell, Jr.

ABA file

EVALUATION OF ETHICAL STANDARDS

In August 1964, this House - acting on my recommendation - created the Special Committee on the Evaluation of Ethical Standards. The Canons of Ethics, adopted in 1908, had well served their purpose for more than half a century. But the need for reevaluation and revision was overdue. Since the formulation of the original Canons, major evolutions had occurred in the practice of law and the responsibilities of lawyers. There had been striking environmental changes in government, in federal and state

relationships, in social, business and economic conditions, and in law itself. As remarkably useful as the Canons had been, they were inadequate for the late 20th Century.

This House, recognizing this, wisely granted the new Committee a broad charter:

"To make such recommendations for changes (in the Canons) as may be deemed appropriate to encourage and maintain the highest level of ethical standards by the legal profession."*

Great care was exercised in the appointment of a distinguished and experienced Committee, chaired by Edward L. Wright.

The one miscalculation was in the original estimate of the time required for the

*Report of ABA 1964, Vol. 89, p. 383.

task. We thought it could be done in two years. In fact, it has required five years of as arduous work as ever demanded of an ABA Committee.*

Printed drafts of the proposed new Code of Professional Responsibility have been widely circulated among the profession. Reports have been made periodically to the House. The fullest opportunity has been afforded for review, consultation and revision.

We now have before us the final draft - the product of five intensive years of searching and thoughtful study.

*The full Committee has met a total of 71 days, subcommittees have met many additional days, there have been conferences with 37 major units of the organized bar and more than 100 additional groups. Professor Sutton has worked continuously for a major part of his time.

Some of the issues confronted in the Code are inherently complex and inevitably invite a diversity of opinion. Indeed, each of us with good reason might have used different language or preferred a different emphasis as to particular points. The twelve members of the Committee, as would be expected in view of their stature and experience, spent many days in reconciling their own viewpoints.

Yet, it seems to me that the end product - the Code now before us - represents a balanced and rational consensus which all lawyers can support. It truly reflects the essential spirit and ideals of our profession. It retains the fundamental values of the old Canons, and

admirably restates and relates them to current needs.

There are still some who say that further study is desirable. As appealing as such a plea is to lawyers, the time has come for the organized bar to act. The present Canons are not only obsolete; they are in fact quite unenforceable.

The most justifiable complaint widely leveled against our profession is the gross inadequacy of our own discipline. There is growing concern among the bar, and bewilderment among laymen, as to the unrebuked conduct of unethical lawyers both in and out of court - conduct which discredits not only lawyers but our entire system of justice.

There has been, it is true, a disquieting reluctance on the part of courts and bar committees to discipline fellow lawyers. But a more fundamental problem has been that the Canons, in their present amorphous form, are simply not capable of enforcement.

The Wright Committee, recognizing this problem, has prescribed reasonably specific disciplinary rules, in addition to the more general statements of ethical considerations. It will be far easier for the law schools to teach, for the bar to understand, and for disciplinary committees and courts to interpret and enforce the proposed new disciplinary rules.

We have delayed far too long in adopting standards which can be understood and enforced.

May I add just a final word: There are some who think that our Codes of Ethics are formulated to benefit lawyers. The fact is they are designed primarily to safeguard the public interest, by assuring for clients the requisite professional competency and fidelity. A failure to adopt ethical standards, and then to enforce them with vigor and impartiality, is a failure in public responsibility. We can meet that responsibility here today by approving this Code, having every confidence that it is a product of which we can justly be proud.