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## Seminar on the Need for Education About Communism

Lewis F. Powell Jr.

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*NOT delivered  
except in this  
form - I spoke  
without manuscript*

SEMINAR ON THE NEED FOR EDUCATION  
ABOUT COMMUNISM

(Notes for use in introductory remarks  
prior to presentation of seminar speakers)

The House of Delegates of the American Bar  
Association in February 1961 adopted significant reso-  
lutions dealing with a pressing educational need. In  
part, these resolutions said:

"We encourage and support our schools  
and colleges in the presentation of  
adequate instruction . . . (on) Com-  
munism, thereby helping to instill a  
greater appreciation of democracy and  
freedom under law. . . ."

Occasionally the question is asked as to why /  
the ABA - the national organization of the legal pro-  
fession - should be interested in education about Com-  
munism. This question might be answered by saying that  
all responsible groups have a duty to encourage education  
which strengthens our country.

But there is a more specific answer, applicable  
uniquely to the legal profession. Lawyers have a

*special responsibility  
and competency  
in this area.*

*and competency*

special responsibility in this area. The first object of the ABA, as stated in its constitution is:

"To uphold and defend the Constitution of the United States and maintain representative government."

If ~~the~~ Communist goal <sup>s. are achieved - by whatever means</sup> ~~(of world domination is~~ realized, the American Constitution and representative government in this country would be destroyed. The rule of law, and the freedoms which it protects, would disappear.

There can be no higher duty of lawyers than to safeguard the institutions which protect the rule of law and which Communism seeks to destroy.

In 1961, when the ABA adopted its resolution there were few secondary schools in all of America which had courses or units on Communism. Even at the college level, the subject was submerged and taught tangentially in connection with other courses.

It is generally acknowledged that the leadership of the ABA contributed significantly to a new awareness of the need to teach this subject - specifically

*and thoroughly.*

and thoroughly. Educators welcomed our encouragement. Indeed, it is fair to say that the relationship between the ABA Committee and educators has continued to be one of mutual respect and full cooperation.

And, here, may I emphasize that the ABA has insisted upon genuine education rather than use of our schools for propaganda - even in a worthy cause.

As Dr. Sidney Hook has said:

"In order to survive, the free world must acquire a more sophisticated knowledge of Communism. . . ."

If western leaders and peoples had been soundly educated in the decades of the 20's and 30's - if, in Dr. Hook's language, they had then acquired a more sophisticated knowledge of the forces shaping history - the debacles of the 40's and 50's may not have been inevitable.

The western powers misappreciated Nazism - with calamitous results. For more than two decades, we have repeated this same mistake in varying degrees with respect to Communism. There has been a basic

omit  
↓

failure on the part of the West to understand the nature of Marxism-Leninism, and to grasp the full and varied dimensions of the Communist thrust for world domination.

The remarkable gains of Communism during this short span of time are without precedent in world history. Contrary to popular belief, there have been few offsetting Free World gains. The territorial march of Communism has been stopped from time to time/and the international Communist movement is now in a state of welcome disarray. But no country/in which the Communists have seized power/ has ever thrown off this tyranny. Communism, once in power, has never yielded an inch.

C. L. Sulzberger, distinguished foreign correspondence of the New York Times, recently emphasized the defensive posture of America and the Free World. He spoke of what he termed the "palid cliches" of "intellectuals" who contend "that in the contest for relative supremacy, the West is gaining." Mr. Sulzberger answered as follows:

*"This simply is not true."*

"This simply is not true. No corner of the Communist world threatens 'to go democratic', but the reverse is often true in the world we know as free."\*

*Begin*

The ABA Committee is, of course, not unaware of the new spirit of "Geneva" which has gripped so much of the western world. There are many who now think it bad taste to refer to Communism as evil and as the enemy of freedom. The <sup>slogans</sup> ~~catch words~~ of the day are "coexistence", "accommodation" and "convergence". There are even those (e.g. "Ban-the-Bomb" groups) who would disarm unilaterally in the misguided belief - contrary to all history - that the Communists would then live in brotherly love.

*Lord Russell*

In this climate of opinion - this state of euphoria - the need for the ABA Committee's work is not as self-evident today/as it was two short years ago when Soviet missiles were being secreted into Cuba.

But this change in public understanding does not mean that the Committee's work is any less

\*N.Y. Times, Feb. 26, 1964

*vital,*

vital. It merely suggests that public memory is short and public understanding still unsophisticated. It was Bertram Wolfe, distinguished scholar, who commented:

"For four and one-half decades, we have waited for the Soviet Union to mellow . . . A review of the judgments of statesmen and analysts over these 45 years makes melancholy reading."

It is the hope of our Committee that, through education, the judgments of <sup>Free World</sup> ~~our~~ statesmen - and the people who support them - will in the future be more realistic.

B // While the principle threat of Communism lies in the international area, its internal subversion is carried forward in every country.

A message from J. Edgar Hoover to all law enforcement officials has just come to my desk. It is dated October 1, 1964, and relates to what Mr. Hoover describes ~~as~~ the current "intensive Communist Party efforts to erect its new facade on the nation's college campuses". He described the newly created youth organization - the DuBois Clubs of America - being used

to dupe unwary youths.

to dupe unwary youth. As might be expected, the official insignia of the DuBois Clubs is the dove of peace/and *its* ~~the~~ avowed goals are unity and brotherhood. Mr. Hoover points out/that behind this false facade of noble purposes lies the reality of Communist "discord, hate and violence".

It is this duplicity - this studied use of semantics to deceive - that makes it so difficult for young Americans to comprehend the real meaning of Communism. As Mr. Hoover pointed out, the only answer is to arm the youth of this nation with "the scalpel of truth" - and this can only be accomplished through education.

In supporting education on the truth about Communism, we must emphasize that lawyers oppose Communism for affirmative rather than negative reasons. We oppose all Communism - not because of ill will toward any people or country - but because we are for the values of democracy and its system of freedom under law. These are the values with which Marxism-Leninism cannot coexist, and which the Communists in every country must seek to destroy.



The deepest convictions of lawyers are affirmative - for representative government and for the great liberties in the Bill of Rights - free speech, free press, freedom of religion, free ballot and fair trial. The overriding priority of our time is the preservation of the very liberties which - despite all talk of mellowing behind the Iron Curtain - do not and cannot exist under Communism in any country.

24/167 10/16/64

Quant. trade law

Secretary Rust

Lawyer's subject.

Lewis F. Powell, Jr.  
ABA Regional Meeting  
Atlanta, Georgia  
October 22, 1964

ETHICAL STANDARDS OF THE BAR

The House of Delegates of the American Bar Association, at the annual meeting in New York, created a new Special Committee on Evaluation of Ethical Standards.

The new Committee is charged with studying ~~and reporting upon~~ the adequacy and effectiveness of the present Canons of Professional Ethics, including their observance and enforcement. It is authorized to make such recommendations for changes as may be deemed appropriate to encourage and maintain the highest level of ethical standards by our profession.

The first adoption of formal rules of ethics in this country occurred in Alabama in 1887, when the bar association of that state adopted its "Rules for Governing the Conduct of Attorneys".\* It was not until

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*Quote Tucker*  
 "A broader inquiry/whether the ethics of our profession rise to the high standard which its position of influence in the country demands."\* *End Quote End Quote*

A Committee was appointed to consider "the advisability and practicability of the adoption of a code of professional ethics by this Association". The Committee, with Mr. Tucker as Chairman, initiated a study which resulted three years later, in 1908, in the adoption of the original 32 Canons of ~~Professional~~ Ethics.

In 1928, Canons 33 through 45 were added. Canon 46 was adopted in 1933, and Canon 47 in 1937. In subsequent years/the need for a general re-evaluation, and perhaps revision, of the Canons has often been suggested.\*

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\*\*The ABF, upon request of the ABA Board, made a study of the need for revision in 1955-58 and by a divided vote concluded that a broad revision was needed.

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But except for certain amendments, the Canons have remained essentially in their original form.

As early as 1934, Chief Justice Harlan Fiske Stone commented:

"In the new order which has been forced upon us, we cannot expect the bar to function as it did in other days and under other conditions. Before it can function at all, as the guardian of the public interest committed to its care, there must be appraisal and comprehension of the new conditions, and the changed relationship of the lawyer to his client, to his professional brethren and to the public. . . . Our Canons of Ethics for the most part are generalizations designed for an earlier age. . . ."\*

It cannot be doubted that many aspects of the practice of law have changed drastically

*since 1908.*

\*Stone, The Public Influence of the Bar, 48 Harvard L. Rev. 1, 10 (1934).

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there have been striking changes in the role of government, in federal and state relationships, and in social, business and economic conditions. These and other changes have caused major evolutions in the practice of law and in responsibilities of lawyers.

In 1908 the typical lawyer was a general practitioner, usually alone, who divided his time between the courts and a family type of office practice. There were few large law firms, few corporate legal departments,

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\*Report, Special Committee of ABF, June 30, 1958, *government*  
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and lawyers in government were limited in number. There was no income tax law; few relevant Federal statutes and regulations; virtually no administrative law; no great body of corporate law practice; and, with the automobile little more than a gleam in the eye of Henry Ford, the flood of tort litigation was yet to come.

As remarkably flexible and useful as the Canons of Ethics have proved to be, the time has come to reconsider them in light of these vast changes in the practice of law.

They also require re-examination in view of the increasing recognition of the public responsibilities of our profession. *It is not suggested*

The Canons have been described as an articulate expression of the "conscience of the profession in the 19th and 20th Centuries."\* We must be sure that they now conform to the conscience of the bar in the mid and late 20th Century.

\*Hurst, The Growth of American Law: The Lawmakers, 329-330 (1950).

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It is not suggested that all/or even a substantial number/of the Canons are obsolete. There is, of course, no thought of starting out to rewrite de novo the ethical standards of the legal profession. The broad principles, ~~as~~ reflected eloquently in the Canons, are immutable. No doubt a major portion of the present Canons will be found adequate. The greater need may be for additional Canons/rather than widespread revision of existing ones.

Closely related to the contents/ of the Canons is their enforcement. There is growing dissatisfaction among lawyers with the adequacy of the discipline maintained by our profession.

The Missouri survey concluded that "a majority of lawyers/are convinced that the public image of the profession is affected <sup>adversely</sup> by the policing ~~procedure~~ of the Canons of Ethics, and that policing (by the Bar) is not adequately ~~enforced~~."\* This survey also indicated that

\*Lawyers Practice Manual (Missouri Bar-Prentice Hall Survey) published by Prentice Hall editorial staff, p. 16 (1964).

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some 27% of Missouri lawyers think that perhaps half of their fellow lawyers fail to live up to the Canons.

Along the same lines, a study in New York City concluded that more than 20% of the city's lawyers "<sup>the</sup> persistently breached Canons of Professional Ethics."\*

Surveys of this kind do not purport to be scientific, and one may doubt whether persistent or deliberate violations approach the percentages which have been mentioned. But few lawyers/in the active practice/doubt that there are significant violations/or that grievance procedure is far less effective than it should be.

A compilation of disciplinary action/for the seven-year period ending with 1962/indicated an average of only 68 disbarments per year. The number suspended was not significantly greater. Dean Blythe Stason, with typical restraint, commented that in a country of some 285,000 lawyers "the number subjected to discipline is remarkable small".\*\*

\*Time magazine, January 10, 1964.

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In somewhat the same vein/ Professor Jerre Williams, addressing the Association of American Law Schools last winter, is quoted as saying: "The best way to attain better ethics in the law profession is to have a few good disbarments."\*

It may well be true, as many think, that grievance committees and courts tend to be unduly lenient in grievance cases. There should indeed be stricter enforcement of ethical standards/ and a more vigilant concern for the public interest. While no one wants punitive action, it must be remembered that the bar has the privilege of disciplining itself - to a greater extent than other professions or callings. This imposes a higher responsibility and one which the bar must discharge with greater fidelity.

But the problem is too complex to be remedied simply by resolving to increase the number of disbarments and suspensions. The principle of a "fair trial" surely applies as much to a lawyer threatened with

\*Time, January 10, 1964.

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disbarment as to other defendants. It is also undoubtedly true that the practical problem of obtaining solid evidence of the violation makes the task of grievance committees extremely difficult. The problem of evidence is especially acute in some of the areas of greatest concern - e.g., solicitation, "preparation" of witnesses, and diligence in duty to one's client.

The new ABA Committee ~~to re-examine the Canons of Ethics~~ will not deal directly with disciplinary procedure. But there is an obvious relationship between the contents of the Canons and their observance and enforcement. The Committee will therefore carefully evaluate the extent to which departures from high ethical standards, and lapses in strict enforcement thereof, are related to the content of the Canons.

Appropriate revisions of or additions to the Canons - where found to be necessary - could contribute significantly to more effective grievance procedure as well as to increasing the level of voluntary compliance.

*Although the form and content -*

Although the form and content of the Canons are of the utmost importance, it must be remembered that the Canons are not an end in themselves. Quite obviously, their purpose is to encourage and help maintain a level of ethical conduct appropriate for a learned profession. In view of the nature and responsibilities of the legal profession, it is not too much to say that its ethical and moral standards must be higher than those of any other calling or profession - with the exception (in a vastly different content) of the ministry. As Ross L. Malone (former President of the American Bar Association) has said:

"~~The~~ (Legal Profession) presupposes a better developed moral awareness, and in day to day practice/presents more occasions requiring resort to conscience/~~in arriving at a decision~~, than any other (profession)."\*

Judge George Sharswood published his famous treatise on Professional Ethics in 1854. He spoke of the legal profession as follows:

Omit

\*Malone, Tucker Lecture, Washington and Lee University (Volume 3) p. 123 (1960).

The instilling of this type of moral + ethical awareness

~~"There is no profession in which moral character is so soon fixed as in that of the law; there is none in which it is subjected to severer scrutiny by the public. It is well that it is so. The things we hold dearest on earth—our fortunes, reputations, domestic peace, the future of those dearest to us, nay, liberty and life itself, we confide to the integrity of our legal counsellors and advocates. Their character must be not only without a stain, but without suspicion. From the very commencement of a lawyer's career, let him cultivate, above all things, truth, simplicity and candor; they are the cardinal virtues of a lawyer."~~\*

The instilling of this type of moral and ethical awareness in a profession which now numbers 285,000 members is a task of monumental proportions. The process must commence as early as possible. Indeed, there are some who think that the teaching of ethical principles at the law school level is useless because by that time the prior training and environment of the student have predetermined his character and attitudes.

But happily this degree of pessimism has been rejected by a great majority of our law schools. It

\*Sharswood, Professional Ethics (1854) p. 168, 169.

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is now generally considered/that the teaching of legal ethics is a necessary step in the education of a lawyer.

Indeed, <sup>in my view</sup> the importance of thorough courses on legal ethics can hardly be over-emphasized. Nor should they be confined solely to a study of the Canons of Ethics, ~~as this approach is far too restrictive.~~ The need is for broadly based courses dealing with both ethics and the professional responsibilities of a lawyer. Happily, this need is gaining increased recognition in our law schools and in the profession generally.\*

The ethical standards of our profession can also be improved by stricter admission policies. The law schools themselves, in admitting students, must give increasingly careful attention to moral and character qualifications. The obvious difficulties in making

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evaluations in this delicate area should not preclude a conscious effort to eliminate, at this point, applicants whose records suggest the absence of the character qualifications so essential to being a lawyer.

There is of course a second chance to eliminate undesirables, namely, upon application for admission to the bar. But by this time it is even more difficult to identify objective reasons for disqualification of one who has attended or graduated from law school.

I have perhaps said enough to indicate the ~~vast~~ complexities of maintaining the desired level of ethical conduct. This is especially true in America where responsibility for admission standards and disciplinary action is dispersed among 50 states. But the difficulties of the task merely mean that the bar at all levels, including the teaching, practicing and judicial branches of our profession, must be even more determined to accomplish improvement.

*Before concluding*

*Note -  
I can and  
have it  
necessary*

We will have the full support of the ABF

14.

Before concluding, you may be interested in a word about the composition of the new ABA Committee. Its chairman is Edward L. Wright, distinguished former Chairman of the House of Delegates. Without undertaking to name the other 11 members, I can say they are broadly representative of the profession: They include two former judges (Mr. Justice Whittaker); two past Presidents of the ABA; two widely known members of the teaching branch; the present and one past chairman of the ABA Ethics Committee. Indeed, each member has a reputation beyond his own state.

It is contemplated that the Committee, in its deliberations, will rely on the accumulated experience of state bar ethics and grievance committees, as well as that of the ABA Committees and Sections. <sup>A</sup> In view of its importance and scope, it is expected that the project will require at least two years.

Now, a final word: For centuries, lawyers have prided themselves on ethical standards which we

thought were  
the highest

Smythe  
Gawbrill

have thought were the highest - self proclaimed and self enforced. Although lawyers will agree that there is real justification for this pride, I suspect that with pride has come a certain amount of complacency.

It is thus appropriate - indeed, essential in my view - that we take a fresh, over-all look at the ethics of the bar, and especially at the extent to which the profession recognizes its unique responsibility to insist upon compliance with high standards. If we pursue this with diligence - and discipline - we may refresh and refurbish the honor of being a lawyer.



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Law School should note

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I have perhaps said enough to indicate the vast complexities of maintaining the desired level of ethical conduct. This is especially true in America where responsibility for admission standards and disciplinary action is dispersed among 50 states. But the difficulties of the task merely mean that the bar at all levels, including the teaching, practicing and judicial branches of our profession, must be even more determined to accomplish improvement.

Before concluding, you may be interested in a word about the composition of the new ABA Committee. Its chairman is Edward L. Wright, distinguished former Chairman of the House of Delegates. Without undertaking to name the other 11 members, I can say they are broadly representative of the profession: They include two former judges (Mr. Justice Whittaker); two past Presidents of the ABA; two widely known members of the teaching branch; the present and one past chairman of the ABA Ethics Committee. Indeed, each member has a reputation beyond his own state.

It is contemplated that the Committee, in its deliberations, will rely on the accumulated experience of state bar ethics and grievance committees, as well as that of the ABA Committees and Sections. In view of its importance and scope, it is expected that the project will require at least two years.

Now, a final word: For centuries, lawyers have prided themselves on ethical standards which we

have thought were the highest - self proclaimed and self enforced. Although lawyers will agree that there is real justification for this pride, I suspect that with pride has come a certain amount of complacency.

It is thus appropriate - indeed, essential in my view - that we take a fresh, over-all look at the ethics of the bar, and especially at the extent to which the profession recognizes its unique responsibility to insist upon compliance with high standards. If we pursue this with diligence - and discipline - we may refresh and refurbish the honor of being a lawyer.