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Cyrus Vance
Simpson Thacher & Bartlett

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Cover Page Footnote

Presiding partner, Simpson Thacher & Bartlett, New York City; United States Secretary of State under President Jimmy Carter (1977-80).

FOREWORD: LEGAL ETHICS AND GOVERNMENT INTEGRITY

*Cyrus Vance**

During my forty-three years as a lawyer, I have had the privilege of serving in senior positions in the organized bar and the federal and state governments. Most recently, I have had the privilege of serving as a member of the New York State Commission on Government Integrity, also known as the Feerick Commission. One of the lessons I have learned and have repeatedly confirmed is the need to uphold and maintain a high level of integrity in both the legal profession and in government. Public trust and confidence in lawyers and government officials alike require that members of each group strive to maintain the highest ethical standards. This issue of the *Urban Law Journal* contributes to our thinking about the need for and problems of preserving both government and professional integrity.

The task of preserving integrity in these two different fora is similar in that both enterprises are self-regulating. While lawyers come under scrutiny from courts, from the public, and from the press, the primary responsibility for keeping lawyers honest lies with the organized bar. The standards of professional responsibility are drafted for lawyers by bar associations and their enforcement is entrusted almost exclusively to lawyers, under the auspices and the oversight of the judiciary. Likewise, as important as the roles of the press, of independent citizens' groups and of others are in making sure that public officials faithfully discharge their responsibilities, the primary responsibility falls to government itself to ensure that officials act honestly and disinterestedly and that the affairs of government are conducted free of corruption, waste and mismanagement. Legislators and government agencies are responsible for adopting standards regulating the conduct of public employees, while government auditors, inspectors general, prosecutors and other agents of government receive a mandate to seek out and redress instances of corruption by government officials.

Neither the legal profession nor government can successfully carry out its self-regulatory responsibilities without the assistance of honest individuals who are aware of wrongdoing by others. For example, the organized bar has always relied on lawyers not only to act in accord-

* Presiding partner, Simpson Thacher & Bartlett, New York City; United States Secretary of State under President Jimmy Carter (1977-80).

ance with the ethical standards of the profession, but also to expose unethical behavior by fellow practitioners. The 1908 Canons of Professional Ethics enjoined lawyers to "expose without fear or favor before the proper tribunals corrupt or dishonest conduct in the profession."¹

The contemporary ethical rules contain similar injunctions, which confirm the important role that individual lawyers play in maintaining the standards of the profession as a whole.²

By the same token, those government agencies which are responsible for discovering and redressing wrongdoing on the part of public officials rely heavily on cooperation and assistance from honest government employees who know of improprieties committed by those around them. An investigative agency cannot hope to fulfill its mandate simply by examining documents. It depends on information from knowledgeable government employees.

There are forces, however, which make it hard for both professional regulatory bodies and government investigators to obtain the assistance on which they depend. Among other things, there is the risk that one's conduct will be misconstrued as a breach of one's professional obligations. Lawyers may not reveal the confidences of their clients; government employees must not "leak" confidential government information. But there is a big difference between breaching an attorney-client confidence or "leaking" information, on the one hand, and reporting misconduct to the appropriate authorities, on the other.

There are also forces of a more personal nature whose sway over individuals cannot be underestimated. It is often a personally painful task to accuse others. It cuts against the grain of a lifetime of social training. It is also frequently a thankless task. I still remember vividly one of the most difficult events in my career as senior partner of my firm. I had to report one of the lawyers in the firm to the disciplinary authorities at the bar association and appropriate law enforcement officials for prosecution as a result of his misconduct. One might recall Ibsen's play, *An Enemy of the People*, in which a leading citizen of a resort community is ostracized and threatened when he discloses that the town's medicinal waters are actually tainted. Although written years ago, this parable unfortunately speaks to our times all too clearly.

Not surprisingly, given the powerful forces counseling silence, some lawyers are reluctant to report wrongdoing, even when their obliga-

1. CANONS OF PROFESSIONAL ETHICS Canon 29 (1908).

2. MODEL CODE OF PROFESSIONAL RESPONSIBILITY DR 1-103(A) (1980); MODEL RULES OF PROFESSIONAL CONDUCT Rule 8.3(a) (1983).

tion to do so is not overridden by a countervailing responsibility to preserve client confidences. The professional literature regrettably makes clear that the lawyers' obligation has been honored mainly in the breach.³

And, if it is hard for lawyers to bring themselves to report the wrongdoing of other lawyers, in fulfillment of an express professional obligation, then imagine how much harder it is for government employees to take the initiative to report government misconduct. Unlike lawyers, government employees have no legal obligation to report. They experience the same personal reluctance to do so. And, most significantly, unlike lawyers, who generally can make an anonymous report to disciplinary authorities at little, if any, professional cost to themselves, government employees who report wrongdoing often place themselves at enormous professional risk.

The examples are legion in which civil servants have lost their jobs or lost opportunities for professional advancement because they "blew the whistle" on wrongdoing.⁴ And the impact of such retaliatory practices reverberates well beyond the lives of those particular employees who fall victim. Other public employees are influenced to remain silent to avoid a similar fate. A survey reported in 1984 revealed that a substantial number of federal employees were aware of fraud, waste or abuse in government but were unwilling to disclose it; more than a third of federal employees who failed to disclose government misconduct were influenced by the fear of reprisals.⁵

The need to protect those employees who make appropriate disclosures of government misconduct is by now incontrovertible. The federal government and more than half of the state governments have passed laws to protect whistleblowers. New York State's law, adopted in 1984, and amended two years later, is just one example.⁶ In his message of approval for New York State's law, Governor Cuomo rightly stated:

Encouraging employees to bring violations to the attention of

3. See, e.g. Burbank & Duboff, *Ethics and the Legal Profession: A Survey of Boston Lawyers*, 9 SUFFOLK U.L. REV. 66, 100-01 (1974); Thode, *The Duty of Lawyers and Judges to Report Other Lawyers' Breaches of Standards of the Legal Profession*, 1976 UTAH L. REV. 95, 99; Note, *The Lawyer's Duty to Report Professional Misconduct*, 20 ARIZ. L. REV. 509, 511 & n.21 (1978).

4. See generally R. NADER, P. PETKAS & K. BLACKWELL, *WHISTLE BLOWING* 39-179 (1972).

5. U.S. MERIT SYSTEMS PROTECTION BOARD, *BLOWING THE WHISTLE IN THE FEDERAL GOVERNMENT: A COMPARATIVE ANALYSIS OF 1980 AND 1983 SURVEY FINDINGS* 5-6 (1984).

6. N.Y. CIV. SERV. LAW § 75-b (McKinney 1990).

their employers and shielding them from employer retaliation if they disclose wrongful conduct to authorities, will protect the welfare of the people of this State, promote enforcement of the law, and give needed protection to employees who wish to act as law-abiding citizens without fear of losing their jobs.⁷

Unfortunately, while this law was an important first step, it has not fully achieved the important — indeed, essential — goal of encouraging and protecting public employees who truthfully assist state and local governments in their efforts at self-regulation.

Many important recommendations about how to strengthen the law regarding legal ethics and governmental integrity are contained in this issue. It is my hope that New York's legislators will reflect seriously on these recommendations and act on them. It is my further hope that the contributions in this volume will stimulate continued attention, both within the field of government and the legal profession, to the ever-present, ever-important challenge of maintaining the highest standards of ethical conduct.

7. Memorandum filed with Senate Bill No. 10074 (August 1, 1984). 1984 N.Y. Laws 3625.