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# The Louis Stein Institute for Professional Responsibility and Leadership

By Joseph M. Perillo\*

The Louis Stein Institute for Professional Responsibility and Leadership was founded in the fall of 1983 at the Fordham University School of Law. Its founder, Louis Stein, gave the Institute a broad mandate. While the Institute will address the ethical responsibilities of the members of the legal profession, it will also focus on the obligation of lawyers to take leadership roles to promote a more democratic and just society.

A workshop was convened at the Fordham Law School on October 27, 1983 for the purpose of defining appropriate (and efficacious) roles for the Institute. Chairing the workshop was Professor Joseph Perillo (Director, Louis Stein Institute and Professor, Fordham Law School). In attendance were the Honorable Francis T. Murphy (Presiding Justice, New York Appellate Division, First Department), Associate Dean Sheila Birnbaum (New York University Law School), Associate Dean Joseph Crowley (Fordham Law School), Associate Dean Edward Dauer (Yale Law School), Dean John Feerick (Fordham Law School), Ms. Carolyn Gentile (Chairwoman, New York State Law Revision Commission), Professor Robert A. Girard (Stanford Law School), Dean Peter W. Martin (Cornell Law School), Dean Richard A. Merrill (Virginia Law School), Mr. Archibald Murray (Executive Director, Legal Aid Society), and Associate Dean Stephen Presser (Northwestern Law School).

What follows is a summary of the workshop discussion based upon a transcript of the proceedings. While an effort has been made to highlight the important viewpoints and to indicate areas of controversy, it has not been feasible to present the view of each of the participants on every question discussed.

The participants were asked to focus on two interrelated questions. (1) What is the proper role for an institute for professional responsibility? and (2) What is the role of the law school in the cause of law reform? The opening salvo came from Justice Murphy, who called for the Institute to direct its efforts towards reforming the legal profession, and rules governing the legal profession because this is where the Institute can have the greatest impact. He suggested that the In-

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stitute and the law schools must work towards a better system of teaching legal ethics. Legal ethics ought to pervade the curriculum, instead of being limited to one course. The Institute should also devote attention to the Model Rules of Professional Responsibility, especially the controversial Rule 1.6 on client confidentiality. Furthermore, rules governing fundraising for judicial electoral campaigns merit study and reform.

In response to the above questions, other participants stressed the need to promote the recognition by law students that lawyers have an obligation to work for the improvement of the legal system and to act as leaders of public opinion. Lawyers represent society as well as their particular clients. Mr. Stein explained this goal as, “[w]hat can we do to preserve our democratic form of government and to improve our democratic form of government so that we can be a shining light for all other governments eventually?”

There was much discussion concerning law students’ preference for Wall Street or other large law firms over public interest or government employment. The participants attributed the present emphasis on Wall Street firms to: (1) the financial pressure on law students, many of whom graduate with between \$20,000 to \$40,000 of debt; (2) the societal perception that attaches greater prestige to Wall Street employment, which, to many law school graduates, is a symbol of success.

The members of the group had mixed feelings about the preference of students to practice at the large firms in big cities. Dean Presser stated that he advised students to take such employment “because it seems to me that this is the place where they are surrounded, for whatever reason, by the finest minds.” Others pointed out that there was great mobility from the large firms to other kinds of legal practice, but little mobility in the opposite direction. In contrast, Carolyn Gentile and Archibald Murray both emphasized the presence of good minds outside the Wall Street environment. Ms. Gentile explained that although the work in the large firm can be intellectually exciting, it does not provide much of the excitement that exists where a lawyer has more personal contact with clients.

Several participants suggested that the Institute study the relationship between the kinds of jobs obtained by graduating seniors and the kind of student who enters law school, the academic environment, and the placement process. A significant issue is whether law school applicants are more interested in money and power than their peers. Furthermore, the placement process deserves in-depth study. Dean Merrill pointed out that such seemingly minor factors as the inability of many

government agencies to make their hiring plans a year in advance has a strong impact on which students decide to apply for government jobs. In addition, students at many law schools, particularly those located in a rural environment, are rather passive in their job searches. He suggested that placement offices should help them reach out to employers different from those that traditionally interview at law schools.

Dean Birnbaum added that students who choose to work for Wall Street firms should nonetheless be encouraged to contribute services to public interest cases. Efforts are needed to make them more conscious of their responsibility. In addition, there should be outreach to the leadership of the firms to facilitate public service work by new associates. Archibald Murray observed that many law firms are not devoting as much attention to pro bono work as they did in the past. He suggested that this may be because the leadership at the firms has changed and current associates are not exerting the same amount of pressure for pro bono work as did their predecessors.

There was considerable discussion regarding the need to improve the public's perception of the legal profession. Specifically, the public image of lawyers has deteriorated in recent years. This deterioration is reflected in the frequent challenges to the ethics of the profession. The consensus of the participants was that the public's perception is largely inaccurate and results from poor public relations as well as a fundamental misunderstanding of the role of the legal system and of lawyers. For instance, there is a lack of awareness that the accused are presumed to be innocent in our legal system. Ms. Gentile pointed out that the public often receives an inaccurate portrayal of the role of the judiciary in our legal system. Judges are prevented from openly disagreeing with the media's criticism and are therefore ill-equipped to correct the misperceptions. Consequently, there is a need to engage in a dialogue with the public to explain the role of lawyers and the structure of our legal system. Several speakers expressed the thought that the education of the public ought to start in high school. It also was recognized that substantive fence-mending might also be necessary.

The participants agreed that the Institute could play an invaluable role in improving the public's image of the profession. To that end, a dialogue between lawyers and other professions was recommended. Furthermore, such a dialogue would be useful for the evaluation of the code of legal ethics. Dean Dauer emphasized the importance of a dialogue between the public and lawyers. "[I]f the idea of legal ethics is a set of norms about how . . . the profession ought to interact

. . . with the larger society and with . . . our clients, . . . then that is a subject matter that [the professional] would be very ill-advised to try to work out wholly internally.”

The participants next analyzed the consequences of the inherent tensions which exist between an attorney's interest in law reform and in the interests of the client. Dean Feerick confirmed that the efforts of lawyers to participate in law reform are sometimes inhibited by the potential displeasure of their clients. Carolyn Gentile observed, “It gets back to economics. I think the lawyer that is in the enviable position of being able to make determinations on what he or she believes to be the right thing to do, has to also be in a position to tell the client that, ‘If you don't like what I said, there is the door.’ And, not every attorney is in that position.”

Just as lawyers are constrained in their law reform efforts, law schools are impeded in their development of alternative curricula. Dean Martin explained his belief that hiring practices at the schools are partly responsible for this situation. He illustrated this by discussing the emphasis placed in law school on tax law as opposed to public benefit legislation such as Social Security. Although it would be logical from a purely symmetrical standpoint for there to be equivalent attention given to the laws that disburse public benefits, the schools do not devote equal attention. While the schools replace the faculty in traditional areas with faculty from the same areas, faculty from the non-traditional areas are not automatically replaced. In addition, other large bodies of important law, such as agriculture and health care law are largely ignored by legal scholars. The Institute has an opportunity to explore such largely unexplored fields of law.

Professor Girard pointed out the legal educators pay insufficient attention to the legislative and rule making processes. He and a number of other speakers urged the law schools to spend less time on the adversarial models and to focus more on non-adversarial dispute resolution methods and other facets of professional services. In addition to developing alternative areas of study, it was suggested that law schools need to devote more attention to the development of the interpersonal skills of their students. The tendency has been to emphasize intellectual skills and to ignore the other skills that lawyers need. Dean Birnbaum pointed out that lawyering courses and clinical programs serve a valuable function by exposing students to clients where they are confronted with the reality of ethical issues. In sum, the Institute could play an invaluable role by assessing the need for changes in curricula.

There was controversy over whether law reform efforts could ex-

ist only at an Institute, such as the Louis Stein Institute, or whether the law schools could also become involved. Dean Martin stated that law schools are constrained since they are “. . . children of the profession . . . [and] are tied to the profession . . . It would be awkward to the point of disabling for a law school to come to a conclusion that there were too many lawyers in the United States and it ought to close its doors.”

Dean Dauer took a different approach. He explained, “The role of the law school *vis-a-vis* the faculty is to nurture scholarship, which I will further define as the production of ideas and criticisms and debates, to be available to those who would engage in law reform when they want to engage in it. That is what we ought to be doing, just protecting scholars to do whatever it is they choose to do, so long as it falls within some very broad limits of quality. For the institutions to be engaged in law reform projects seems to me of necessity to put the institution in a position of having to take a position. I think that is utterly wrong.” While not disagreeing, Dean Martin put forward the thought that law schools should be supportive of faculty, who as individuals are engaged in various forms of law reform.

Thus, the Institute is uniquely situated to play a valuable role in law reform since it is not subject to the same constraints as the law schools. Nonetheless, some of the participants urged the Institute to encourage the law schools to serve as operational centers of law reform. It was clear that the broad nature of the mandate given to the Institute gives it great flexibility to work for law reform and to enhance the perception by lawyers that they have obligations to society as well as to their clients. A good part of the discussion was devoted to the notion that the Institute should seek a role in ascertaining ways in which this perception can be inculcated into law students. It was also the sense of the group that the task was a continuing one. The consciousness of the practicing bar also needs prodding to remind its members of their responsibilities to society. There was also a consensus that the Institute could help educate the public with respect to the social role of the legal profession; enter into a dialogue with the public with respect to the social role of the legal profession; with the law schools to make them rethink their tasks; with bar associations concerning the changing nature of the practice of law and the problem of the absorption of 35,000 law graduates a year. In the words of Peter Martin: “[t]here are so many potential spheres of activity, my mind boggles.”

