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Report of Working Group #4

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The Working Group on Moral and Religious Counseling of Clients addressed whether it is ever appropriate for lawyers to counsel clients on moral and religious grounds. In addressing this question, the Working Group considered the implications of moral and religious counseling in the context of social inequality, unequal lawyer-client relationships, and cultural and religious diversity. The central recommendation of the Group was that law schools and theological institutions examine this complex issue further.

Directed by Mark A. Michaels' paper, *Indigenous Ethics and Alien Laws: Native Traditions and the United States Legal System*, the Working Group initially considered the past and present hostility directed at Native Americans and Native Hawaiians. For example, members discussed the paternalistic approach of United States to the Native Hawaiian problem-solving method of familial self-healing. The Group noted that Alternative Dispute Resolution might be helpful here; lawyers could train elders in mediating Western forms of dispute resolution, encompassing both traditional and American law.

The Group also acknowledged the ignorance displayed by most Americans concerning Native American culture and the public's lack of interest in all but the most exotic American Indians. The lack of knowledge or interest in poor American Indians arguably subjects them to greater neglect and persecution than the urban poor. The Group additionally discussed the need for lawyers to educate themselves and to be resourceful, creative, and attentive lawyers for American Indian clients.

The Working Group next attempted to reconcile the traditional directive nature of lawyer-client counseling with the suggestion of Rule 2.1 of the American Bar Association Rules of Professional Responsibility, that such counseling should consist of mutual exchanges. The Group identified the problematic lack of formal legal training on counseling. They considered three fundamental questions: Who controls the representation? Are there any interests besides the client's which may be considered? What does the lawyer want for her client: victory, rectitude, goodness, or autonomy?

Next, the Working Group addressed the problems in professional education. The Group agreed that client-centered counseling ought to be a more central part of the law school curriculum. They agreed that legal education often perpetuates the image of lawyers as all-knowing and all-powerful.

The Working Group also considered the adversarial system as a rights model, under which the protection of rights transcends the realization of truth and justice. The Working Group then discussed the

“Dialogic Model.” Rule 2.1 requires that lawyers not only inform their clients of the legal consequences of their actions, but to engage them in dialogue as well. The Group acknowledged that many lawyers feel uncomfortable entering a Dialogic Model, on the grounds that such a model is at odds with client autonomy. The Group identified these models as prime subjects for debate in law school classrooms and bar association meetings.

The Group also discussed lawyers who explain the letter of the law to clients without directly offering advice. Some members of the Group raised questions about the potential social, economic, and emotional impact of this type of relationship on clients.

Some members of the Group disliked the very notion of “moral and religious counseling.” Especially for indigent clients, these group members felt that it was inappropriate for a lawyer to go beyond legal counseling, unless a client requests it. Some Group members acknowledged their own hostility toward religion. Others embraced religion. The Group shared concern about lawyers who extend their roles beyond appropriate limits.

The Working Group recognized that the context of the lawyer-client relationship is pivotal in determining what sort of counseling a lawyer should offer. One factor to consider is how well the lawyer knows the client. Another factor is the mutuality in the lawyer-client relationship. Due to the plurality of legal systems, practices, and clients, the Group discussed the necessity for contextual, rather than uniform, morality.

The Working Group discussed several suggestions for greater cultural awareness among practicing lawyers, including practice-specific clinical experience and continued legal education to practitioners. They noted the impact exorbitant student loans have on the careers law students choose. Several members argued that the current cost of legal education is itself immoral.

Some members of the Working Group thought it would be unconstitutional to prohibit religious counseling, citing the lawyer’s right to speech and the notion of “lawyer autonomy.” Others expressed concern that allowing religious counseling would encourage overreaching and paternalism and worried about the effect on client autonomy. The former argued that if the counselor candidly revealed her personal religious views then it would not be so imposing. The latter argued, however, that indigent clients with court-appointed lawyers are basically captives without the means to fire their lawyers if they do not like or feel oppressed by their counsel’s advice.

In the end, the Working Group remained divided over the role of religion in client counseling. The Group did, however, achieve a consensus that religious counseling may be appropriate if a client specifically requests it. The Working group recommended an exploration of

these issues by law schools, bar associations, and theological institutions.

Notes & Observations