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# Book Reviews

## The Hazards of Legal Ethics: Two Views

*Ethics in the Practice of Law.* By Geoffrey C. Hazard, Jr. *New Haven and London: Yale University Press, 1978.* Pp. xviii, 159. \$10.00.

### Non-Answers to Tough Questions

#### Robert Kasanof†

Every lawyer, heaven knows, wants to be ethical these days, what with grievance committees, grand juries, and the S.E.C. in full cry on the lawyer hunt. Then, too, there is the old voice of conscience, and malpractice suits, and explaining oneself to one's children. Naturally, a tough, practical book that provided guidance for right action in complex situations would be a godsend.

Professor Hazard's book is not it. *Ethics in the Practice of Law*<sup>1</sup> is the product of that marvelous modern engine of intellectual accomplishment, the weekend conference (in this case, the series of weekend conferences). The reader is assured at the start that the book is the product, not of the runts of the legal litter,<sup>2</sup> but rather of those the English call "Top People." The foreword sets the tone:

There were twenty-five participants in the discussion, all of them members of the country's professional elite and most of them lawyers. The lawyers included partners of large prestigious law firms located in major cities, general counsel of large corporations, the chief counsel of a large legal aid agency, a federal judge, the director of a foundation concerned with law and the legal profession, lawyers of similar rank in the government, and professors of law at nationally recognized universities.<sup>3</sup>

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1. G. HAZARD, *ETHICS IN THE PRACTICE OF LAW* (1978) [hereinafter cited by page number only].

2. After all, even law schools make an occasional mistake.

3. Green, *Foreword*, at pp. ix-x.

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And Hazard's own words adopt and amplify this theme:

But this group's concept of its ethical responsibilities is of consequence far out of proportion to its size. It includes a large fraction of the practitioners who are best versed in technical legal knowledge, most proficient in professional art, most highly compensated, and most often occupants of positions of authority, prestige, and influence within the profession.<sup>4</sup>

Professor Hazard thus lines himself up with another marvelous new breed, the social critic. Those fellows are much more modern than the old-fashioned philosopher or thinker. Hazard, the social critic, has distilled for the reader the result of a good deal of high talk of these Top People. He tells us early on what the effort is:

Professional ethics, it was said, should be seen as general principles of conduct, not as a corpus of specific rules; as a group of principles that conflict with each other in many applications and extensions, not an internally consistent code; as qualified imperatives that always have to yield at some point to competing considerations; as resultants of encounters with tough practical choices in real life, not abstract mandates laid down in advance; as products of personal deliberation, not emanations from some outside authority; as the expression of self-fulfillment and self-control, not subordinancy [*sic*] to external discipline. When the discussion developed, the same concept was suggested in less analytic and more allusive terms: "civility," "ethically pragmatic," "no Mickey Mouse," the conduct of a "decent human being."<sup>5</sup>

The problem with this advice is simply that it is utterly unhelpful to the attorney who needs guidance in his quest for ethical conduct. This difficulty can be seen more clearly in Professor Hazard's treatment of specific ethical dilemmas—for example, the problem of identifying "who is the client?"

The problem of client identification can arise when the lawyer becomes entangled in a conflict of interest between a corporation's board of directors and an officer of that corporation. Professor Hazard illustrates the problem with the plot of an executive unburdening himself to the attorney about arguably improper conduct committed by the executive or a subordinate. Is the attorney's first obligation to his-client-the-corporation, or does his obligation of confidentiality to his-client-the-officer prevent him from acting on this information? This is a difficult and important problem, but Hazard offers no original

4. P. xiv.

5. P. 4.

guidance. Instead, he merely restates the potential perils of several possible alternatives. The concept of a corporate entity could not simply be ignored in any situation in which a conflict appeared, for that would leave the lawyer "responsible to everyone or to no one."<sup>6</sup> Similarly, the lawyer could not be required to choose who among those concerned would be his client; that would be expensive and impractical and would leave some individual or group underrepresented.<sup>7</sup> Finally, the confidentiality rule could not be suspended with respect to corporate entities without inhibiting open and full consideration of complex legal problems.<sup>8</sup> Are we thus left, as Hazard fears, with the present situation, in which "the lawyer takes the rule of confidentiality as a given and has to decide who his client is"?<sup>9</sup>

If there is a way out, the reader receives no hint of it. Professor Hazard suggests that, for the ethical attorney, "the question is not whether [he] owes a duty 'to' his client and not 'to' others, but how he should shape his courses of action given that he has duties to both his clients and others."<sup>10</sup> All well and good. The actual content of this advice, however, is revealed to be neither original nor helpful: "the lawyer has to let his judgment, perhaps one might say his conscience, be his guide."<sup>11</sup> This intellectually unsatisfying advice need only be compared with the old-fashioned ruminations of traditional essayists to assess its true value. Consider, for example, the simple words of Herbert Spencer: "Ethical systems are roughly distinguishable according as they take for their cardinal ideas (1) the character of the agent; (2) the nature of the motive; (3) the quality of his deeds; and (4) the results."<sup>12</sup> Given the need to make a decision with "competing considerations," Spencer's test helps decide specific cases. Hazard's does not.

Any discussion of ethics in the practice of law should provide one of two things: either deep intellectual insights into ethics in general or practical guidance for specific problems. One source of the latter kind of information is the *Code of Professional Responsibility*,<sup>13</sup> which gives attorneys some, albeit relatively narrow, instruction.<sup>14</sup> Some ethical

6. P. 55.

7. *Id.*

8. Pp. 55-56.

9. P. 56.

10. *Id.*

11. P. 57.

12. H. SPENCER, *THE DATA OF ETHICS* 32 (London 1879).

13. ABA CODE OF PROFESSIONAL RESPONSIBILITY (1969) (replacing CANONS OF PROFESSIONAL ETHICS (1908)).

14. Even in those instances in which the Code is relevant, it could stand improvement. All lawyers ignore the Code section that requires them to report offenses committed by other lawyers. ABA CODE OF PROFESSIONAL RESPONSIBILITY, DISCIPLINARY RULE 1-103(A) (lawyer with unprivileged knowledge of attorney's violation of disciplinary rule shall

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systems may go too far;<sup>15</sup> others may not go far enough. But *Ethics in the Practice of Law* goes nowhere. Professor Hazard is adept, for example, at poking holes in the *Code's* provisions governing confidentiality.<sup>16</sup> As in so many other of the book's discussions, however, the reader is never treated to Hazard's own thoughts on the proper confidentiality rule—except, perhaps, the rule to let one's conscience be one's guide. *Ethics in the Practice of Law* is neither a helpful practical book nor a satisfying philosophical work. It is simply Delphic.

No such book is complete without a misplaced medical analogy. In a parting and mildly barbed piece of adulation for the participants in the conference, the book concludes:

If practicing ethically includes performing with all the care and thoroughness that one is capable of, practice on behalf of the big corporations may be the most ethical kind. At any rate, critics of corporation lawyers might also notice that the most proficient doctors are at the big hospitals and not the county health services, that the most proficient journalists are with the national media and not the Utica Tribune, and that leading sociologists do not teach in junior college. Then, of course, there is the money.<sup>17</sup>

More to the point, however, is the fact that the nature of medicine means it is in fact the sick who are treated. Put in another way, a very rich man does not ordinarily have the attention of dozens of leading physicians attending to his head cold. The medical profession is not mindlessly crowded with cosmetic plastic surgeons. Indeed, as bad as the distribution of medical services may be, it has not generated widespread public doubt as to the ethics of doctors or the ultimate worth of the healing arts. Carl Sandburg's hearse-horse does not snicker when it takes a doctor away.<sup>18</sup>

report violation to appropriate authority). The minuscule number of complaints lodged by attorneys might lead one to think that violations seldom occur; in fact, violations simply go unreported.

15. Consider, for example, the absurd position that a lawyer's duty is entirely to his client. See, e.g., Freedman, *Professional Responsibility of the Criminal Defense Lawyer: The Three Hardest Questions*, 64 MICH. L. REV. 1469 (1966).

16. Pp. 21-33. ABA CODE OF PROFESSIONAL RESPONSIBILITY, DISCIPLINARY RULE 4-101 requires an attorney to preserve the confidences and secrets of his client except in limited circumstances. One exception to this general rule involves information concerning "[t]he intention of his client to commit a crime." *Id.*, DISCIPLINARY RULE 4-101(C)(3). Professor Hazard argues that the distinction between confidences as to past illegal conduct (which must, of course, be preserved) and those involving future illegal conduct is difficult to maintain. Pp. 27-28, 30-31. He suggests that allowing either disclosure or preservation of secrets as to both past and future conduct is more defensible than the present scheme. *Id.* at 28-29.

17. P. 153.

18. Cf. C. SANDBURG, *The Lawyers Know Too Much*, in COMPLETE POEMS 189 (1950).

Those of us who believe that the institution of lawfulness is served by lawyers, and by and large served well, had better get to it: we must explain what we are doing when it is right and change what we are doing when it is wrong. The public appetite for on-the-one-hand, on-the-other-hand discussions of legal ethics is pretty well sated.

No segment of the public now looks to the legal profession with substantial admiration—except, perhaps, for its cunning. Businessmen believe themselves choked with regulations and hamstrung by lawyers: their own, their adversaries', the government's. Law-and-order zealots believe that the administration of criminal justice is expensive, cumbersome, hypertechnical, and above all ineffectual. The poor believe that the administration of justice is hopelessly weighted against them, in terms both of its substance and of the unavailability of legal services. Ralph Waldo Emerson's rebuke and question still ring clear: "It is not an excuse any longer for his deeds, that they are the custom of his trade. What business has he with an evil trade?" We had better have much more serious and satisfactory answers in the future.

## Serving Self, Not Others

Laura Nader†

This small book by Professor Hazard<sup>1</sup> reports on a two-part symposium on the ethical lawyer. The symposium, held during the summer of 1976, was the first of several Seven Springs Center symposia on the ethics of practicing professions. The twenty-five participants in the discussion were members of the country's professional elite—primarily, lawyers from prestigious law firms, large corporations, and government agencies.<sup>2</sup> Also present were a federal judge, a sociologist, two political scientists, and several law professors. The composition of the

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1. G. HAZARD, *ETHICS IN THE PRACTICE OF LAW* (1978) [hereinafter cited by page number only].

2. Green, *Foreword*, at pp. ix-x.

symposium adumbrates the content and themes of this book, outlined in Professor Hazard's lively introduction.

Hazard recognizes the importance of understanding the legal profession as it is actually practiced, for, as he notes,<sup>3</sup> the behavior of large corporations and governmental agencies is influenced by the legal advice that these organizations receive from the elite lawyers who serve them. These lawyers, who constitute ten percent of the profession, have influence far out of proportion to their number. As victims of such concentrated power, Americans have become increasingly concerned over the professional performance and responsibility of all occupational elites.

Hazard's brief introduction mentions relatively little of the literature on lawyers' ethics.<sup>4</sup> His selection reflects the bias of a profession principally concerned with itself rather than with a wider public.<sup>5</sup> Although Professor Hazard expresses concern in his introduction about the power and social impact of the most powerful ten percent of the legal profession, he rarely returns to such disquieting themes.<sup>6</sup> My initial enthusiasm for this book was dampened as I moved from one page of narrow discussion to another. Perhaps the last word in the book—"money"<sup>7</sup>—sums up the reason for my disappointment.

As an anthropologist, I find the book interesting for its therapeutic function: consoling powerful members of the bar.<sup>8</sup> The elite members of the bar are in effect told that they need worry, not about the wide-ranging impact of their activities, but only about how to deal with their clients—a concern that dominates every discussion in the book, whether about the adversary system, fees, advice, or conflicts of in-

3. P. xii.

4. See pp. xvii-xviii & nn.3, 4.

5. Some works have avoided this narrow bias. See, e.g., *VERDICTS ON LAWYERS* (R. Nader & M. Green eds. 1976); *WITH JUSTICE FOR SOME* (B. Wasserstein & M. Green eds. 1970); Cahn & Cahn, *What Price Justice: The Civilian Perspective Revisited*, 41 *NOTRE DAME LAW.* 927 (1966).

6. Hazard makes no mention, for example, of the pioneering work of Mark Green dealing with the Washington lawyers who are part of this legal elite. See M. GREEN, *THE OTHER GOVERNMENT* (1975).

7. P. 153.

8. The ritual functions of such occasions were noted in Thurman Arnold's classic *THE SYMBOLS OF GOVERNMENT* (1935), in his discussion of the "ceremonial" aspect of jurisprudential writing and of trials. *Id.* at 60-71, 128-34. Lawrence Friedman describes law reform commissions in a similar vein:

Justification is one of the major functions of law reform. Whatever value it has for society, law reform is useful to the legal profession. It is part of the demonstration that what the bar is and does is good for society. . . . Law reform makes it possible for the top of the profession to strike poses of nobility and rectitude, to go before the public in an attitude of high public spirit.

Friedman, *On Legal Development*, 24 *RUTGERS L. REV.* 11, 42 (1969).

terest. The book reflects the specialized practitioner's passion for technical skill—a value that seems to override what most people think the central purpose of law should be: a more just society. Several questions occur to the anthropologist who encounters this lawyerly state of mind. What kind of cognitive set leads lawyers to discuss judicial procedure independent of the types of illegal or deviant action that stimulate the need for procedure? Why are salary and therefore rank dependent upon having the greatest ability (as self-defined), rather than upon serving the greatest need? Why does a book on ethics in the practice of law operate on the level of what is thought to be, rather than on what in fact *is*?

Three themes seem central to understanding why Professor Hazard organized the book as he did. The first theme relates to the concept of evidence; the second, to the belief that legal ethics primarily involves the dyadic relationship between lawyer and client; and the third, to the question of competence, training, and power.

(1) *Lawyers and the Concept of Evidence*. Although lawyers use the term "evidence" in common with scientists, the legal usage is not merely different from that of the natural and behavioral sciences, but is in fact antithetical.<sup>9</sup> For the lawyer, evidence is information that may be useful in winning a case. For the scientist, evidence is used to test a hypothesis or connection between collected facts; science is empirical rather than argumentative. Because the book reflects the unempirical bias of the legal professional, it fails to address satisfactorily the issues central to an examination of ethics and legal practice.

Unfortunately, the non-scientific method that pervades the book prevents the author from exploring and testing underlying assumptions about practical legal ethics. Thus, while Professor Hazard lists a number of ideas worth implementing experimentally, he describes those ideas as assumptions to reject, rather than assumptions to test.<sup>10</sup> He notes, for example, that "[t]he polemics . . . assume or assert that large corporations and major government organizations are prescient, powerful, and relentlessly self-serving, and attribute this potency in large measure to the influence and manipulative abilities of their legal advisors."<sup>11</sup> Similarly, he observes that the bar's apologists "often exhibit a myopic self-assurance that the lawyer's definition of the lawyer-client

9. Other scholars have commented upon this problem. See, e.g., D. BOORSTIN, *THE MYSTERIOUS SCIENCE OF THE LAW* (1941) (analyzing scientific and religious themes in legal thought); Hart & McNaughton, *Some Aspects of Evidence and Inference in the Law*, in *EVIDENCE AND INFERENCE* 48 (D. Lerner ed. 1959).

10. Pp. xvi-xvii.

11. P. xvi.

relationship fulfills client expectations . . . and is good for the general public interest.”<sup>12</sup> Hazard’s presentation suggests that such assumptions must be rejected rather than tested. Hazard also seems to discount the notion that lawyers and other professionals are often indifferent to what many people would consider to be important ethical issues.

The book is replete with untested assertions. One of the most extraordinary is the statement that “[t]he advocate who represents large corporations rarely confronts the problems of client perjury or fabrication or destruction of evidence.”<sup>13</sup> Hazard presents no evidence to support that claim, nor does he admit that there is evidence to the contrary.<sup>14</sup> Elsewhere in the book, Hazard assumes that, in order to recruit capable lawyers, the government must pay them large salaries.<sup>15</sup> There is no evidence that receiving large salaries encourages the honest, competent, and moral practice of any profession. Even on matters of interest to lawyers, the omissions are glaring. For example, little empirical research has been conducted on the lawyer-client relationship (in contrast to the many studies of the doctor-patient relationship).<sup>16</sup> In the absence of research, Hazard’s confidence in his assertions is unjustifiable.

When Professor Hazard states that critics of corporate lawyers should notice that “the most proficient doctors are at the big hospitals and not the county health services,”<sup>17</sup> he ignores the fact that, despite greater professionalization and new medical discoveries, the quality of health care in America has deteriorated. Just as it would not solve

12. *Id.*

13. P. 132.

14. Striking evidence of evidentiary destruction appears in Mark Green’s book on Washington lawyers. See M. GREEN, *supra* note 6. Green, himself a lawyer, described a practice he called “burn-bagging.” He said: “It is not unknown for clients and counsel either to destroy subpoenaed evidence (which is criminal) or, more commonly, to periodically purge files of potentially damaging documents (euphemistically called a ‘document-retention policy’).” *Id.* at 69. Unlike Hazard, Green has support for his observations: a memorandum from the Assistant Attorney General in charge of the Antitrust Division about the “increasing practice on the part of substantial business concerns [to] destroy documents periodically . . . because of the advice of sophisticated lawyers.” *Id.* at 70. Green was not referring solely to “shyster” firms; he discusses an instance in which members of Covington & Burling caused the destruction of information about violations of the law. *Id.*; cf. *Hearings before the Subcomm. on Oversight & Investigation of the House Comm. on Interstate and Foreign Commerce*, 96th Cong., 2d Sess. (1980) (statement of Ralph Nader) (citing 42 examples of evidentiary destruction). See generally Note, *Legal Ethics and the Destruction of Evidence*, 88 YALE L.J. 1665 (1979).

15. P. 118.

16. A few studies of lawyer-client relations have recently been published. See, e.g., D. ROSENTHAL, *LAWYER AND CLIENT: WHO’S IN CHARGE?* (1974); Sudnow, *Normal Crimes: Sociological Features of the Penal Code in a Public Defender Office*, 12 SOC. PROB. 255 (1965).

17. P. 153.

our health care problems to train more doctors like those who practice at large hospitals, neither would it improve the practice of law in America to increase the number of corporate lawyers or the refinements of their practice. Major improvement can occur only when corporate lawyers become more concerned with the public consequences of their actions.

(2) *The Dyadic Relationship*. The book's organization mirrors the tendency of lawyers to confine questions of legal ethics within the dyadic lawyer-client relationship. Hazard mentions in passing that a lawyer may have duties to third persons that override a client's demands,<sup>18</sup> and he considers the problems of identifying the "client."<sup>19</sup> Hazard alludes to the possibility that lawyers may owe some duty to consumers, employees, and "denizens of 'the environment.'"<sup>20</sup> But Hazard never discusses this possibility at length; perhaps he thinks it too remote to merit serious consideration.

Hazard's narrow focus typifies the tunnel vision of many professionals. The legal profession, and even many law schools, concentrate upon the solution of precisely defined legal problems, rather than upon analysis of broader social consequences of lawyers' actions. Lawyers are trained to think of problems in terms of technical detail, rather than in terms of social policies. In his classic work on the symbols of government,<sup>21</sup> Thurman Arnold quoted Harvard Professor Thomas Reed Powell's description of a related aspect of the legal mind: "If you think that you can think about a thing inextricably attached to something else without thinking of the thing which it is attached to, then you have a legal mind."<sup>22</sup> The legal mind may consider legal ethics in relation to the client's needs as well as the lawyer's, but it is conditioned to ignore the question of the obligation of lawyers to a wider public.

As originally conceived, the dyadic lawyer-client paradigm, however much it slighted broad societal considerations, did recognize the lawyer's paramount interest in defending the rights of individuals and fulfilling his duty to the client. But that conception has not adapted to the modern situation, in which the client is more often a giant corporation or agency, not a natural person. The distinction between individual and organizational clients surely needs to be examined in any discussion of ethics. Hazard addresses this distinction only periph-

18. P. 37.

19. Pp. 50-53.

20. Pp. 53-54.

21. T. ARNOLD, *supra* note 8.

22. *Id.* at 101.

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erally, rejecting the bar's "idealized version" of its "individual client"<sup>23</sup> and observing that the "mid-Victorian image" of lawyer-client relations applies to criminal cases but not to the tie between corporations and their general counsel.<sup>24</sup> Although Hazard contends that the "criminal defense model" is an inappropriate source of rules for lawyers in other contexts,<sup>25</sup> he offers no systematic discussion of this distinction or of its relation to the social duties of ethical lawyers.

Hazard's fleeting references to the public obligations of the legal profession are almost lost in his extensive discussions of the daily bread-and-butter issues faced by lawyers with corporate clients. Yet law is a public profession: lawyers are licensed by the state, granted a near-monopoly of access to the judicial system, and receive millions of dollars in tax-deductible fees.<sup>26</sup> This public status entails a scale of obligations ignored by Hazard outside his introduction.<sup>27</sup> The Seven Springs Conferences should have been more than an opportunity for corporate lawyers and allied professionals to discuss the problems in their daily work schedules. The conference could have been an opportunity to pull back from immediate ethical questions relating to specific corporate clients in order to discuss the wider social impact of lawyers' actions. If the elite refuse to address their public obligations, the next conference might do better to convene the clients of lawyers—or, better yet, the potential clients who never gain access to the legal elite.

(3) *Professional Training and Competence.* Clients and potential clients would no doubt question how the establishment sets standards of competence, how lawyers are trained to deal competently with their problems, and how attorneys interact in an essentially self-regulating profession.

Hazard never considers whether the educational institutions that have given elite lawyers their merit badges are the best means of preparing professionals to meet society's needs. Tests and credentials are formal mechanisms used to ensure professional competence. The prevailing assumption—that a selective, elitist profession can provide better service to consumers—seems to be utterly wrong; the more exclusionary a profession, the more likely it is that the profession will be concerned

23. P. xvi.

24. Pp. 140-43.

25. P. 151.

26. Individuals cannot deduct routine legal expenses, but corporations can deduct payments to lawyers as ordinary and necessary business expenses. See B. BITTKER & L. STONE, *FEDERAL INCOME TAXATION* 320-28, 368-69 (5th ed. 1980).

27. P. xiii.

with its own narrow self-interest, rather than with the needs of the people being served.<sup>28</sup>

Historians have documented the shift in models of relation from what was essentially a vertical model, emphasizing the relationship between a professional and client, to a horizontal model emphasizing the relationship among professions: "Thou shalt not compete with thy fellow professions."<sup>29</sup> In her discussion of the "ethics of noncompetition," Corinne Gilb notes that the development of laws restricting the practice of professions coincided with the growth of concern for harmony among professionals. Nineteenth century professional ethics were primarily concerned with the relationship between the individual and those served. Beginning in the 1870's, professional organizations gave a new emphasis to professional solidarity.<sup>30</sup>

Professional language plays an important role in the socialization of professionals by creating an identity within the profession and by isolating professionals from non-professionals. Jargon impairs the client's ability to evaluate professional competence. The mysteries of professional language are perpetuated by educational institutions and elite practitioners.<sup>31</sup> The total process is one that encourages what might be called professional deformation.<sup>32</sup> Distancing of professional and client interests, I suspect, is associated with an absence of professional reality-testing and with decreased competence (whether measured by the consumer of professional services or observed by major social thinkers).

28. See L. Nader, *The Sub-Culture of Professionals as it Relates to Professional Performance and Credentialism* (April 28, 1977) (on file with *Yale Law Journal*). See generally White, *The Definition of Legal Competence: Will the Circle Be Unbroken?* 18 SANTA CLARA L. REV. 641 (1978).

29. C. GILB, *HIDDEN HIERARCHIES* 67 (1966) (footnote omitted).

30. See *id.* (to reinforce homogeneity and sense of community, "professions have enacted rules relating to ethics that allow the profession simultaneously to retain power and to present a collective image of 'dignity and honor.' Unity requires that competition be curtailed.")

31. A good example is BARRON'S HOW TO PREPARE FOR THE LAW SCHOOL ADMISSION TEST (E. Epstein, J. Shostak, L. Troy, & N. Horvath eds. rev. ed. 1977). In discussing the "principles and cases" questions, the guidebook warns:

Read the directions carefully. You will be told that for the purpose of the test you are to assume the principle of law to be a valid one, whether or not your personal experience or knowledge leads you to believe the principle to be incorrect. . . .

Remember that these questions do not presuppose any specific legal knowledge on your part; you are to arrive at your answers by the ordinary processes of logical reasoning.

*Id.* at 267.

32. Cf. R. MERTON, *SOCIAL THEORY AND SOCIAL STRUCTURE* 251-54 (rev. ed. 1968) (discussing Veblen's, Dewey's, and Warnotte's analyses of attributes of bureaucrats and professionals); Taylor, *Law School Stress and the "Deformation Professionnelle,"* 27 J. LEGAL ED. 251 (1975).

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It has been said repeatedly that there is no way to measure legal competence.<sup>33</sup> After five years of research on American complaints,<sup>34</sup> my colleagues and I were left with a gnawing question: why, when we are selecting the best and the brightest, do we have such a multitude of complaints about American professional competence? Traits that satisfy the specialized standards of the legal profession may fail to satisfy the needs of the public. Professional competence is an ethical issue, and it calls for greater integration of the profession with the society that it serves. Our generation understands well the danger of knowing more and more about less and less.

As has often been recognized in the past decade, the best legal minds are not working on the most important and difficult problems. The law is being used to benefit the powerful.<sup>35</sup> It is admirable that Hazard is concerned with ethics and the relation between lawyers and their powerful clients. Early in his book he is perceptive in calling attention to the constraints of the work-setting of the modern professional.<sup>36</sup> In his concluding remarks he also notes that "the modern legal advisor is an actor in the situations in which he gives advice. And as such he is accountable."<sup>37</sup> Lawyers influence the quality of food that we eat, the drugs that we take, and the planes that we fly; in short, they affect the quality of life for us all. Unfortunately, between the front and the back of this book, the reader does not get a sense of the substantive impact of modern corporate law practice.

33. The LSAT's, in particular, have come under sustained fire. *See, e.g.*, Nader & Nairn, *Startling Admissions*, *STUDENT LAW.*, March 1980, at 28. Some commentators have advanced proposals for measuring legal competence. The Cahns, for example, use the consumer model to make such a measure. *See* Cahn & Cahn, *supra* note 5, at 931. Hazard uses another measure of competence: the corporate law firm, which supposedly enables lawyers to develop the highest levels of professional skills. *See* p. 152.

34. In the early 1970's I initiated a project on how Americans complain about professional services. Anthropology students from various universities, as well as young lawyers, assisted in this research, which was supported by the Carnegie Corporation. Some of the conclusions from the study appeared in Nader, *Disputing Without the Force of Law*, 88 *YALE L.J.* 998 (1979). The basic data will appear in L. NADER, *NO ACCESS TO LAW: ALTERNATIVES TO THE AMERICAN JUDICIAL SYSTEM* (forthcoming 1980).

35. *See* Nader & Serber, *Law and the Distribution of Power*, in *THE USES OF CONTROVERSY IN SOCIOLOGY* 273 (L. Coser & O. Larsen eds. 1976).

36. P. xv.

37. P. 151.