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Patrick L. Baude

*Indiana University School of Law*

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# An Essay on the Regulation of the Legal Profession and the Future of Lawyers' Characters

PATRICK L. BAUDE\*

## INTRODUCTION

A book on legal ethics, published eighty-two years ago, advised lawyers that if they must smoke in their offices, at least they should smoke cigars rather than cigarettes lest their clients believe "lawyers therein have little or no practice and beguile the time by deadening their senses with cigarette 'dope.'"<sup>1</sup> It would not be hard to imagine a contemporary Polonius advising a lawyer to confine her chemical recreations to Chardonnay rather than crack for similar reasons. What would be hard to imagine is that such contemporary advice would be called "ethics" rather than "marketing."

For this symposium, the editors have invited the faculty to speculate on current and future issues in some field in which we work. In this Essay, I discuss the relationship between the characters of lawyers and the rules regulating the legal profession. I believe that the way lawyers, regulators, and scholars think about this issue has been too largely directed by the assumption that character is a quality of personality that lawyers forge outside of their profession. Much of the resulting literature reflects a concern about the interaction between the lawyer's mental and moral dispositions and the practice of law, whether for the purpose of judging a lawyer's fitness to practice or for the purpose of testing the conflict between individual values and the working lives of the profession. At the same time, the various regulatory schemes controlling lawyers' behavior are usually examined by asking how effective they are at controlling the professional's presumed appetite for unethical conduct.

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\* Professor of Law, Indiana University School of Law-Bloomington. A.B., 1964, The University of Kansas; J.D., 1966, The University of Kansas; LL.M., 1968, Harvard University. The author is a member of the Indiana Board of Law Examiners. Of course, the views expressed here are not the views of that Board. In fact, it is doubtful that the views expressed here are those of the author in his capacity as a member of the Board.

An earlier version of this paper was presented at a meeting of the Law and Society Association in May, 1992. The author is grateful to William Simon, Robert Rosen, and Jeffrey Stake for comments on that version. None of them have seen this version, and they are accordingly blameless.

1. GLEASON L. ARCHER, *ETHICAL OBLIGATIONS OF THE LAWYER* 56 (Fred R. Rothman & Co. 1981) (1910).

There is not a long history of scholarly writing about the body of law regulating lawyers. Indeed, until the turn of the century, there was not really such a body of law at all. Not all states were as extreme as Indiana, whose state constitution protected the right of all voters "of good moral character" to practice law.<sup>2</sup> Throughout the United States, there were low educational requirements, perfunctory bar examinations, no equivalent of modern malpractice actions, and little by way of administrative oversight and discipline. Until twenty years ago, most professors writing on the subject were reformers rather than scholars, arguing for the creation of regulatory mechanisms of some sort.

In the last twenty years, there have been two important branches of scholarly discussion. One branch has analyzed the reforms in historical and utilitarian terms. Powerful historical accounts have argued that the reforms earlier in the century were more effective at elevating the income and status of the profession than at protecting the public. Careful empirical studies, especially Deborah Rhode's work, which probably defines this genre, have shown that the current effect of regulation has not been to protect the public so much as to ensure the spoils of victory to those who control the politics of the bar.<sup>3</sup> The second branch, to which the work of William Simon<sup>4</sup> and David Luban<sup>5</sup> is central, has used philosophical methods to explore the ethical issues of law practice.<sup>6</sup>

These intellectual studies support a searching critique of the existing regime. What is touted as consumer protection—the admission process, restrictions on unauthorized practice, and judicial oversight—is just a cleverly disguised guild arrangement. And what is presented as the grand link between the ethics of the bar and the rule of law is largely a rationalization for an uncritical ideological embrace of the capitalist ethos. The result is a world in which the poor have no lawyers, ordinary people have lawyers who are better at getting business than doing it, and the powerful have lawyers who feel bad about their effectiveness in augmenting that power.

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2. IND. CONST. art. VII, § 21 (repealed 1932).

3. E.g., Deborah L. Rhode, *The Delivery of Legal Services by Non-Lawyers*, 4 GEO. J. LEGAL ETHICS 209 (1990); Deborah L. Rhode, *Why the ABA Bothers: A Functional Perspective on Professional Codes*, 59 TEX. L. REV. 689 (1981).

4. William H. Simon, *The Ideology of Advocacy: Procedural Justice and Professional Ethics*, 1978 WIS. L. REV. 29.

5. DAVID J. LUBAN, *LAWYERS AND JUSTICE: AN ETHICAL STUDY* (1988).

6. What seems surprisingly missing is a vigorous debate in the law and economics framework. See generally Robert D. Cooter & Daniel L. Rubinfeld, *Economic Analysis of Legal Disputes and Their Resolution*, 27 J. ECON. LITERATURE 1067 (1989).

To some extent, the real world needs to digest this critique in order to move on. The United States Supreme Court, for example, has certainly put the force of federal law on the side of competition rather than restrictive regulation—in, for example, its advertising<sup>7</sup> and residency<sup>8</sup> decisions. But theory usually moves faster than practice. The purpose of this Essay is to speculate about the future of theory.

I believe the unfinished business of theory is to explore the lawyer's character itself and to recognize that this character has in important ways been constructed by the regulatory regime. The contemporary mechanisms are not as crude as they were in 1910—that is, the need to advance the profession's interest by aligning it with the cigar-smoking class would not be accomplished by discussing cigarettes in an ethical text. But I think much can be learned about the contemporary system by looking at it as an effort to construct lawyers rather than to regulate them. To that end, I explore the character and fitness requirement for bar admission as a sort of case study of this process.

## I. CHARACTER AND FITNESS

For most of the past half-century, nearly all the states have conditioned admission to the bar upon an applicant's being able to demonstrate that he or she is of good "character" and "fit" for the practice of law. Among sociologists and historians of the legal profession, it is a common belief that these character and fitness restrictions were aimed at keeping the American bar as Anglo-Saxon as possible.<sup>9</sup> Character and fitness requirements were directed mainly at southern European men since there were far more effective barriers to entrance for women and racial minorities. It seems clear that the requirements no longer serve their original purpose. Even more striking, it seems hard to see that the requirements serve *any* straightforward purpose. The proportion of applicants denied admission to the bar is minute—best estimated at one in five hundred.<sup>10</sup> Yet the requirement persists in every state and commands a fairly large amount of time and money.<sup>11</sup>

The obvious explanations for the continuation of character and fitness inquiries are inadequate to explain the present state of affairs. It appears, I believe, that the regulation of the bar is made of two almost incompatible

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7. *Shapero v. Ky. Bar Ass'n*, 486 U.S. 466 (1988).

8. *Supreme Court of Va. v. Friedman*, 487 U.S. 59 (1988).

9. JEROLD S. AUERBACH, *UNEQUAL JUSTICE: LAWYERS AND SOCIAL CHANGE IN MODERN AMERICA* (1976).

10. Deborah L. Rhode, *Moral Character as a Professional Credential*, 94 *YALE L.J.* 491, 516 (1985).

11. *See generally id.*

components. On the one hand is the project of convincing potential customers that their lawyers will not cheat or otherwise harm them. This is an essential part of marketing for any business: the contractor is bonded, the drug smuggler allows on-site inspection, and the lawyer can, at least implicitly, draw upon the *public* institutions regulating the bar to vouch for her integrity. This business of being able to make plausible promises of honesty to potential customers is fairly mundane and works fairly well. Lawyers who steal from their clients will get disbarred and client-protection funds might actually provide some hard cash.

The other project is the Weberian enterprise of justifying the privileges of lawyers in the political and economic sphere. These privileges are finally justified by appeal to the idea that lawyers are committed, in the words of the Preamble to the American Bar Association's Model Rules of Professional Conduct, to "cultivate knowledge of the law beyond its use for clients, . . . to improve the law . . . and to exemplify the legal profession's ideals of public service."<sup>12</sup> This second project is by and large a failure or, at best, an illusion.

The practical success of lawyers is in part dependent on preventing the public from seeing clearly the difference between these two projects. In that way, the successes of the first can partly hide the failure of the second, and public subsidies for the first can be justified by appealing to the second. The rule, the rhetoric, and the image of "character and fitness" are each a means of making these two distinct projects appear to be united. But a large group cannot create illusions of this sort without coming to believe them. And what a group comes to believe about itself has a way of becoming true.

## II. THE PROBLEM

The starting point has to be Deborah Rhode's comprehensive study published in 1985. She shows convincingly that the character and fitness standard for admission is administered in an unpredictable way and rests on unsubstantiated and implausible factual assumptions. Her concluding summary, that "[a]s currently implemented, the moral fitness requirement both subverts and trivializes the professional ideals it purports to sustain,"<sup>13</sup> has yet to be seriously attacked, yet alone refuted.

Her evidence that the requirement is in part a form of professional hypocrisy includes two facts which help to define the problem I discuss here.

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12. MODEL RULES OF PROFESSIONAL CONDUCT preamble (1992).

13. Rhode, *supra* note 10, at 592.

First, only a very small number of people are in fact kept from the bar on grounds of character and fitness—about one in five hundred applicants.<sup>14</sup> Second, as her survey shows, a significant number of the official screeners in many states believe that the screening process is of little or no use.<sup>15</sup> Indeed, browsing through current publications of the National Conference of Bar Examiners will reveal that Professor Rhode's work is generally accepted as a valuable scholarly study of the process rather than dismissed as a radical critique. A recent exchange in Minnesota illustrates the situation. The Minnesota State Bar Association, following a two-year study, recommended substantial curtailment of that state's character and fitness screening, relying in large part on Rhode's article:

The Committee could find no studies which have statistically validated attorney character and fitness screening. At least one extensive study and scholarly article by a [visiting] Harvard Law School professor concludes that such screening as currently done cannot be validated and should be scrapped . . . .<sup>16</sup>

The Board of Law Examiners replied:

The Committee cites an article by Deborah Rhode as authority for this proposition. While Ms. Rhode's article has been quoted before by those who seek to curtail pre-admission investigations, the trend nationally is for admission authorities to inquire more closely regarding past character and fitness problems, and to devote more resources to background investigations.

. . . .

The Board is currently studying the records of a small sample of applicants who, subsequent to admission, were disciplined for professional misconduct. The study appears to indicate that those applicants who disclosed character and fitness problems upon application for admission are more likely than other applicants to engage in conduct which later results in professional discipline. However, regardless of the final outcome of this study, common sense and practical experience suggest that one does not need a statistically validated study to conclude that an applicant with a track record of fraudulent conduct is more likely to engage in fraudulent practices as an attorney.<sup>17</sup>

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14. *Id.* at 516.

15. *Id.* at 555 (noting that 14% believed the process was ineffective, 25% were unsure, and slightly over 50% found the process effective).

16. Bar Application Comm., Minn. State Bar Ass'n, Bar Application Committee Report and Recommendation 5, May 1991 (revised Nov. 1991) (copy on file with author) (citing Rhode, *supra* note 10).

17. Letter from Margaret Fuller Cornielle, Director, Minnesota Board of Law Examiners, to Robert J. Monson, President, Minnesota State Bar Association 8 (Sept. 3, 1991) (copy on file with author) (presenting the Board of Law Examiner's response to the Bar Application Committee's report (Bar Application Comm., *supra* note 16)).

The exchange in Minnesota is unusual because it has been formalized in an exchange of official letters. The underlying dialogue, however, is not unusual. Substantial and respectable voices within states, often among the officials charged with enforcement responsibility, question the value of any character screening. The reply of the traditionalists is not, "Oh no, you're off base," but rather, "Well, maybe, but we're carrying on." In this context, one would expect to find some states abandoning the inquiry, others appointing committees to modify it, some states introducing new and stricter in-your-face rules, and so on. It is the absence of any strong reaction that is at least curious and, I believe, telling.

There are three possible straightforward and instrumentalist explanations for the persistence of the character and fitness inquiry. (1) Inertia, pure and simple. (2) Deterrence: perhaps the inquiry is prized, not for keeping people out at the moment of admission, but rather for keeping them from even thinking about careers in law. (3) Redirection: perhaps the name of the inquiry is the same but the substance of what is done has changed in response to the cumulation of criticism. Although I cannot completely discount any of these explanations, they are not alone convincing explanations for the persistence of the requirement.

### *A. Inertia*

No doubt it is a mistake to underestimate the force of doing nothing. It may be that criticism of the character and fitness standard is working its way slowly through the system and I am wrong to assume that change is not underway—it is simply moving slowly. There are two reasons to reject this explanation.

First, consider comparable questions in the licensing of physicians. Traditionally, doctors were screened for "moral character" in the same way as lawyers. But this standard has been changing fairly rapidly in recent years. Rhode, for example, conducted her most detailed research with respect to fourteen states. In two of those states, the licensing requirement of good moral character has been eliminated from the medical licensing statutes in the last ten years.<sup>18</sup> Pointedly, one of those states is Minnesota. In 1985, the requirement of "good moral character" for doctors was replaced with the far

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18. Maine deleted "good moral character" from the medical licensing statute in 1983. ME. REV. STAT. ANN. tit. 32 § 3271 (West Supp. 1991). Minnesota did the same in 1985. MINN. STAT. ANN. § 147.02 (West 1989).

more specific standard: "[Have not] engaged in conduct warranting disciplinary action against a licensee."<sup>19</sup> If inertia explained continuing the status quo for lawyers, why would medical licensing be different? Surely the medical authorities could have said about physicians what the bar authorities said about lawyers: "[O]ne does not need a statistically validated study to conclude that an applicant with a track record of . . . [irresponsible] conduct is more likely to engage in . . . [irresponsible] practices as . . . [a physician]."<sup>20</sup>

Second, although many legal institutions are slow to change, professional regulation of lawyers is not among them. The last decade has seen enormous changes in advertising, solicitation, geographic restriction, billing practices, law firm organization, and the like. Of course, some of these changes have been produced by external forces. But the self-regulatory mechanisms have also produced rapid change. The introduction and widespread use of the multistate bar examination has substantially changed one part of the admission process and, as Richard Abel has observed about rapid change in the governing professional recommendations, "[c]omplete revisions of the ABA rules were proposed or adopted in 1928, 1933, 1937, 1954, 1969, and 1982."<sup>21</sup>

### *B. Deterrence*

A second possibility is that the real point of the character and fitness requirement is that it deters some definable subset of people from even beginning the study of law. Taken this way, the paucity of applicants actually screened out by the admitting authorities is proof that the requirement is efficacious—scoundrels, radicals, and the like do not waste their time in law school because they realize that the investment would be wasted and instead they use the capital to fund a political campaign or a graduate degree in business. This seems unlikely, although hard to refute by any specific evidence. There are many uses for a law degree not requiring bar admission—teaching and careers in business, for example. An "undesirable" would then still have some incentive to invest in law school, and little reason not to spend the minimum of effort to see if bar admission is possible. In many states, it is possible for a student to apply for preliminary character and fitness screening once she has been accepted in an accredited law school. This possibility, rarely used, would surely be a common practice if there were a

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19. MINN. STAT. ANN. § 147.02(1)(g).

20. See *supra* note 18.

21. RICHARD ABEL, AMERICAN LAWYERS 141 (1989).

substantial population of would-be bar members unwilling to risk the three-year investment in legal education.

It might be argued that people who think about legal careers at some formative psychological moment abandon their hopes, perhaps even unconsciously, because they realize that lawyers have high standards of moral character but that they themselves have such moral deficiencies that an alternative career, perhaps as a drug dealer or a physician in Minnesota, would be more appropriate. The argument, in other words, is that the actual operation of character and fitness standards is irrelevant—what matters is the public perception. One could imagine such a mental process in the dream world of the American Bar Association seventy-five years ago, but not in our culture, not in a generation of *L.A. Law* watchers.<sup>22</sup>

### C. Redirection

Another possible explanation for the persistence of the character and fitness inquiry is that the criticisms, while seeming to roll off the backs of the affected agencies, have in fact been taken silently to heart. Consider Minnesota again. When that state's bar association criticized the requirement because of its lack of empirical foundation, the law examiners responded with a factual study recommended by an ABA committee twenty years earlier.<sup>23</sup> In the study, the investigators reviewed the files of fifty-two lawyers disciplined in Minnesota after admission to practice.<sup>24</sup> The Minnesota admitting authority has a particularly well-developed set of criteria for ranking admissions applications to determine whether they present an issue requiring further screening for character and fitness—for example, nonpayment of child support or conviction of a felony or misdemeanor.<sup>25</sup> Using these criteria, the investigators retrospectively classified the fifty-two files: they found that twenty-six of them met the standards that would currently trigger close scrutiny. This fifty percent of disciplined applicants who met the closer scrutiny criteria should be compared with the twenty percent of all applicants who meet these criteria. By any reasonable measure, the difference in these numbers is statistically significant. Of course, this study has a number of methodological problems. All of us who work with state supreme courts

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22. There are many riches in Robert E. Rosen, *Ethical Soap: L.A. Law and the Privileging of Character*, 43 U. MIAMI L. REV. 1229 (1989).

23. See Alan Dershowitz, *Preventive Disbarment: The Numbers Are Against It*, 58 A.B.A. J. 815 (1972).

24. Carl Baer & Peg Corneille, *Character and Fitness Inquiry from Bar Admission to Professional Discipline*, B. EXAMINER, Nov. 1992, at 5, 6.

25. See *id.* apps. A, C.

recognize the difficulties of access to sensitive and confidential information like this. A very serious problem with the Minnesota study is the necessity of doing the classification retrospectively, compounded by the destruction of records more than ten years old. Some of the criteria for classification are so subjective—for example, a “recent and serious employment termination”<sup>26</sup>—that retrospective classification raises very serious problems of objectivity. In addition, for purposes of the observation I am about to make, the small sample size is a problem. The sample is large enough to make a statistically significant judgment about the gross relationship between all criteria of admission and all kinds of professional discipline. But the samples are not large enough to produce statistically significant answers to more focused questions—for example, is a plagiarizing law student likely to be professionally negligent?

I think we can, however, learn one important thing from the Minnesota study: if the methodological problems can be resolved, it would be possible to predict lawyer misconduct more effectively than is often supposed by academic critics. To explain why I think that point is important, I need to outline the theoretical bases of the academic critique of character and fitness inquiry.<sup>27</sup> There are two fundamental objections. One is that prediction of behavior is far more difficult than common sense supposes; the retrospective correlations drawn by casual observation, usually called common sense, are seldom verifiable under controlled circumstances. The second is that “moral character” is not a unitary phenomenon. One who fails to file tax returns is no more or less likely to abuse children than another who makes large charitable contributions. Since ethical behavior is so heavily influenced by context, extrapolating from, say, hardball driving behavior to hardball litigating behavior is not only statistically difficult but theoretically wrong-headed.

This theoretical academic critique is most powerful when directed to the “character” part of character and fitness. At its beginning, the exclusionary function of the screening requirement seems to have been aimed at “character” rather than fitness. Even the Indiana Constitution of 1851,<sup>28</sup> which protected the right of all “voters” (males, of course, in 1851) to practice law, was limited to voters “of good moral character.” The idea of “fitness,” however, evokes a different set of concerns—concerns that we might today articulate

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26. *See id.* at 6.

27. All definitively reviewed in Rhode, *supra* note 10.

28. IND. CONST. OF 1851, art. 2, § 2 (amended 1881, 1921, 1976, 1984).

in the language of the *Diagnostic and Statistical Manual*.<sup>29</sup> We could say that an untreated alcoholic who went bankrupt, got divorced, and has a felony arrest record, is a bad risk for his clients—without making any judgment about his character.

The Minnesota study, in other words, by aggregating “character” (which may have no correlation with attorney behavior) with “fitness” (which may have a solid relationship with attorney behavior), may still be consistent with the generally accepted psychological principle that “character” itself is not a fixed and unitary phenomenon. In fact, courts and lawyers have always done something very odd with the relationship between character and fitness. Typical, even of an earlier generation of cases, is *Schwartz v. Board of Bar Examiners* in 1957.<sup>30</sup> Schwartz was exactly the sort of person the character requirement was meant to keep out of the New Mexico bar—a Jew and an ex-communist. In the course of discussing the constitutionality of the “character” requirement (and of finding a violation of due process), Justice Black wrote this for the court: “A State can require high standards of qualification, such as good moral character or proficiency in its law, before it admits an applicant to the bar, but any qualification must have a rational connection with the applicant’s *fitness* or capacity to practice law.”<sup>31</sup> Read closely, this passage seems to require that fitness is the constitutional standard. Although this passage has been often, very often, quoted in upholding the character requirement, it has rarely been read closely.

### III. THE PURPOSE OF REGULATION

Almost every problem in the regulation of the legal profession is subject to conflicting analyses. Controlling admission to the bar, for example, is seen by one group as the manipulation of supply to maximize the income of already entrenched practitioners. Others will argue the need to protect the public from unqualified or unscrupulous practitioners whose skill the lay person will be unable to evaluate (or, to put it more precisely, information costs in a free market will be too high and incompletely internalized). Restrictions on solicitation are either barriers to entry for new firms or respect for the autonomy of clients at times of distress. And so on.

There is a central problem with the economic analysis of the rules regulating lawyers. Lawyers as a group lack the commonality of interest

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29. AM. PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS, (3d ed. rev. 1987)

30. 353 U.S. 232 (1957).

31. *Id.* at 239 (emphasis added).

which might characterize many entrepreneurs.<sup>32</sup> Consider, for example, the admission of new lawyers. A solo practitioner probably dreads new competition in the market for his limited diet of court appointments, wills, and the like. Other, "elite" segments of the profession profit from new lawyers—professors, for example, or senior partners who pay wages for new associates and therefore favor an ample supply of available labor. It would be hard to predict which segment of the profession would have the most influence with the admitting authorities. The same problem exists with unauthorized practice, for example. Wall Street and K Street firms hardly make their money because of their licenses; much of what they do is done, for fees in the same range, by investment bankers and lobbyists. Indeed, the most powerful District of Columbia firms were some of the strongest proponents of partnership with nonlawyers. Such firms do not represent the same economic interest as the solo practitioner threatened by the licensed independent paralegal.

On most points of collective action, then, the legal profession is unable to act in its common interest because its interest is not common. The one point of common interest is the creation of an effective system by which lawyers can assure clients that they are bound to them. These are legal duties analogous to what I have called "fitness" in the preceding section. These are the duties to keep confidences, to segregate trust funds, and to file suits before the statute of limitations runs. The reader of the *Model Rules* will note that these duties are clearly specified in straightforward sections of the code. The legal system has created effective remedies for these violations. One of the most frequent criticisms of the professional discipline system is that it responds mainly to client complaints and almost never acts without a specific complaint from an injured client.<sup>33</sup>

Viewed as a problem of collective action, what if the regulation of lawyers stopped here, eliminating the inquiry into "character"? There would be no plausible claim that lawyers should control the system of discipline (at least, any more than they control all systems of discipline through the needs of staffing enforcement agencies and judicial review). Regulation of lawyers would resemble the licensing of plumbers. It would be accomplished by guidelines enacted by the legislature and enforced through an ordinary agency process, instead of through judicial guidelines often beyond the constitutional reach of either the executive or legislative branch. No doubt the regulatory agencies could be partly captured, but it would be hard to achieve the

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32. See generally Richard L. Abel, *Toward a Political Economy of Lawyers*, 1981 WIS. L. REV. 1117.

33. For a sophisticated discussion, see David B. Wilkins, *Who Should Regulate Lawyers?*, 105 HARV. L. REV. 799, 822-24 (1992).

permanent and irrevocable custody which exists under the current system. Perhaps it is no accident that, in Indiana for example, plumbers are specifically forbidden by the legislature to have sex while on a housecall<sup>34</sup>—while in California, the courts, bar, and legislature have spent four years trying to figure out who has jurisdiction over lawyer-client sex.<sup>35</sup>

What is needed to complete the project of regulatory capture is the claim to act in the public interest. The reader of the *Model Rules* will note obligations to treat opposing parties fairly, to reform the legal system, to be truthful and open, to perform pro bono legal service, and so on. The careful reader will also note, however, that these duties are usually phrased as duties, but only in aspirational language (A lawyer *should* render public interest legal service<sup>36</sup>) or language of compelling vagueness (A lawyer shall report another lawyer if there is a *substantial* question about the other's ethics<sup>37</sup>). I have never found a case of a lawyer disbarred for not performing pro bono service. In most states, however, a lawyer who steals from a client will be gone almost automatically. Yet it appears as though the enforcement apparatus applies equally to both situations. Thus the coercive force of the state both subsidizes the public relations process and allows the profession to corral the free riders who might not otherwise be willing to support the expense of maintaining generalized client confidence.

While the enforcement mechanisms may not apply with equal force to the protection of consumers and to the promotion of the public interest, lawyers have defined themselves—their characters, anyway, if not their very selves—in such a way that they feel dissatisfied with, even repelled by, their professional lives if they fall too far short of this standard. This point is obviously controversial and one for which I have too little evidence and perhaps too much hope. Recognizing that regulation's main effect is the construction of character does, however, enable us to discuss what lawyers should be like by asking not, "Will we know it when we see it?" but, "How do we create it?" If we have created our profession rather than regulated it, we have to take a rather different order of responsibility for it.

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34. IND. CODE 25-28.5-1-27.1-(b)(5) (1988).

35. See *Court Adopts Sex Rules for California Lawyers*, NAT'L L.J., Aug. 31, 1992, at 6.

36. MODEL RULES OF PROFESSIONAL CONDUCT preamble (1992).

37. *Id.* Rule 8.3.