

Introduction to the Keck Forum on the Teaching of Legal Ethics

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INTRODUCTION TO THE KECK FORUM ON THE TEACHING OF LEGAL ETHICS

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The editors of the *William & Mary Law Review* kindly asked me to say a few introductory words about the papers, published in this issue, that were presented at the Keck Forum on the Teaching of Legal Ethics held at the Law School in March, 1996. At William and Mary, following tradition is a way of life, so I will do what I can to provide a standard, old-fashioned overview. The conventional tasks of such an introduction seem to be, first, praising the conference and, second, summarizing the papers.

Praise I can do and, in this case, am especially delighted to do. The generosity and wisdom of the W.M. Keck Foundation made this conference a possibility, while the wisdom and determination of Professor Jim Moliterno made the conference a reality. Thanks go, therefore, to both the Foundation and the Professor.

As the conference papers reveal, we are very proud of our Legal Skills program at William and Mary. I believe this is the (very good) reason why Joan DuBois of the Keck Foundation recommended our school as an excellent place to hold this very important, long overdue session. We are also very proud of our Legal Skills program director, Professor Moliterno. Jim's quali-

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ties of dedication to excellence and to detail as well as his wonderful combination of intellectual curiosity and moral commitment let all of us who participated in the conference know from the outset that its lessons would live on well beyond its formal adjournment.

To a large extent, then, this excellent Symposium issue is a tribute to the Keck Foundation and to Jim Moliterno. Reading the papers compelled me to think also about a tribute of a different kind. Collectively, the articles published in this Symposium reflect how two "fields" of legal teaching and research have matured in the past quarter-century: the field of professional responsibility (or legal ethics or legal profession) and the field of clinical legal education.

Perhaps I should be ashamed to report that, when I started law teaching in 1968, both legal ethics and clinical law teaching were widely regarded as ill-formed stepchildren of the legal education establishment. People who taught and wrote in these fields were not considered to be "real" academics, but regarded as wannabe professors, lawyers who were hiding in secret little closets in the ivory tower to avoid both the realities of law practice and the rigors of substantive legal scholarship.

This caricature was never true. Certainly, no one who reads these articles can believe that the old caricature reveals any truth today. Many of the legal academy's most important scholars are teaching and writing in these "fields" of legal ethics and clinical instruction. Fortunately, the great majority of these people attended the Keck Forum and submitted papers for this Symposium.¹ It is a joy to read such a testament to these disciplines, especially for one who remembers those bad old days.

This Symposium is thus both a tribute to its sponsor and its organizer and a testament to the fact that legal ethics and clinical education are fully matured major fields of academic study in

1. Of course, not every contributor to this Symposium is primarily an ethics or a clinical scholar. Additionally, I do not mean to assert that the fields are somehow welded together. One can easily be engaged in legal ethics, legal responsibility, or legal profession research without being a clinician. (Don't stop at surface appearances. For example, one might think of Professor Susan Koniak as a nonclinical person who does ethics but I know a secret about Susan Koniak; in an earlier academic life, she was a terrific director of an excellent Continuing Legal Education organization.)

law. Personally, I think that no one better personifies the scholarly importance and accomplishments of legal ethics and legal system scholars than Professor Carrie Menkel-Meadow, William and Mary's 1996 Keck Fellow-in-residence. Her excellent essay, which leads off this Symposium, is a model of critical multidisciplinary scholarly analysis of different systems of dispute resolution.

Menkel-Meadow's fields, however, are not my fields and so I plead "incompetent" to the dictate that I now fulfill the second traditional role of the introducer, that of summarizing the papers. Let me be clear about this point. I have read and learned from these articles. I simply do not believe I could do justice to each of them.

Collectively, however, these Keck Forum papers have taught me a good deal about those "fields" in which I do feel competent.² Reading and reflecting on the articles in this Symposium reminded me that we cannot and should not think of "ethics" or "professionalism" as topics that may be divorced from any other area of law. Whatever we teach, we teach ethics, professionalism, and normative evaluation of behavior. These papers are about how we ought to go about these tasks. In this manner, they speak to anyone concerned about legal education.

Consider one of the subjects I teach regularly: antitrust. Utterly devoid of ethical issues, right? No! Every class, every topic demands that we ask questions such as: What values is the Court or the Congress seeking to implement here? Do we care more about a loss of productive efficiency or an arithmetically equivalent gain in consumer surplus? Why do we treat reliance on open market mechanisms as a normatively positive policy?

In short, one thing this Symposium teaches us is that thinking about teaching legal ethics is remarkably like thinking about teaching the welfare economics of industrial organization policy.³ Of course, we cannot teach twenty-five-year-olds to adopt

2. When not performing decanal duties (i.e., doing things around the law school that the professors, students, support staff, librarians, and janitors refuse—usually for good reason—to do), I teach and write about antitrust law, constitutional law, and telecommunications law.

3. I certainly hope this sentence does not offend the contributors to the Symposium. I would not be surprised were they to complain that I am debasing the glory

our view (or, the correct view) of ethics. That was never the point, either of the course in antitrust or of the one in professional responsibility. In both courses, however, we can help each other to think more clearly and more systematically about the underlying ethical value choices—especially if we think, as these writers do, about our pedagogic techniques.

As we think of these techniques, all of us—not just those whose “subject” is legal ethics—would do well to consider “clinical” instructional methods, whether they be “real” or “simulated.” This point, too, comes through strongly in this collection of Keck Forum papers. Again, these writers do not “merely” explore whether legal ethics should be taught in an environment of real or simulated law practice. Rather, they discuss how all of us can expand the learning potential of our value-laden courses by adding the dimension of concrete practice conditions to our hypotheticals.

Welcome, then, to the Symposium of the Keck Forum on the Teaching of Legal Ethics. The Symposium is a wonderful tribute to its sponsor, its organizer, and those who participated, bringing together in one place the principal insights of many of our most accomplished ethics and practice scholars. At the same time, the Symposium is also a major contribution to the wider dialog of legal education pedagogy, a dialog relevant not only to those who teach legal ethics but to all law teachers and law students.