

By Larry Dubin

THE COLUMN OF THE LEGAL EDUCATION AND PROFESSIONAL STANDARDS COMMITTEE

Bringing the Spirit of Martin Luther King, Jr. into a Legal Ethics Course

Recently, I gave my Professional Responsibility class a writing assignment.¹ The students were required to read a Dr. Martin Luther King, Jr. speech, delivered on December 27, 1962, at a church conference in Nashville, Tennessee, where he explained his philosophy about racial integration.² The students were to write a research paper indicating how the content of Dr. King's speech was relevant to the ethical responsibilities of lawyers.

This assignment was intended to allow the students to appreciate the eloquence of Dr. King's civil rights message and to relate it to the moral and ethical values of lawyers. Many of these values transcend a narrow legalistic interpretation gained by merely learning the Michigan Rules of Professional Conduct.

Dr. King delivered this speech at a time when he believed "the problem of race and color prejudice was the most compelling moral issue facing our country." Nevertheless, he remained optimistic that desegregation would occur within the next decade.

Dr. King clarified the difference between the goals of desegregation, which required compliance with needed legislation, with the ultimate goal of integration, which is "the positive acceptance of desegregation." Hence, desegregation can be enforced by laws, while integration also requires the goodwill of people.

In his speech, Dr. King mentioned that every person deserved to be treated with dignity, that freedom is a requirement for life itself, and that "integration is recognition of the solidarity for the human family."

Dr. King drew an important distinction between obligations that are enforceable and those that are unenforceable. He stated: "The former are regulated by the codes of society and the vigorous implementation of law enforcement agencies. Breaking these obligations, spelled out on thousands of pages in

law books, has filled numerous prisons. But unenforceable obligations are beyond the reach of the laws of society. They concern inner attitudes, genuine person-to-person regulations, and expressions of compassion which law books cannot regulate and jails cannot rectify. Such obligations are met by one's commitment to an inner law, written on the heart."

Many of the students' papers richly captured important aspects of the moral underpinnings of lawyers' professional responsibilities. I offer excerpts from some of these papers in the hopes that my fellow lawyers will appreciate the students' insights.

Kathleen V. Schultz

Dr. Martin Luther King, Jr. saw the Supreme Court's decision against racial segregation as a critical event, but he advocated going beyond desegregation, to integration—something that cannot be regulated by law, the "positive acceptance of desegregation and the welcome participation of Negroes into the total range of human activities." Dr. King believed that "as America pursues the important task of respecting the 'letter of the law,' she must be equally concerned with the 'spirit of the law.'" By definition, "spirit" is something of essence: character, chi, chutzpah, etc. While the letter of the law cannot effectively regulate or restrain the spirit, rules, such as those promulgated by the ABA, can be drafted to provide guidance as one struggles with such inner, spiritual issues. Rules are a step in the right direction toward moral guidance, but attorneys as a community should practice with an eye toward the "spiritual" themes of Dr. King's

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work, the inner worth of persons, freedom, and community. Just as the ultimate solution to the race problem lies in the willingness of men to obey the unenforceable, so too does the ultimate solution to the ethical problems of the legal profession lie in the willingness of attorneys to obey unenforceable obligations, the "spirit" of the Rules.

Erin M. Badovinac

Many of the ideas announced by King's speech can be easily transferred to the current legal crisis in this country because the impoverished can be likened to the Negro of King's day. Desegregation parallels the Model Rules, ethics opinions, and cases that tell lawyers they have a duty to serve. Integration exemplifies the end for which all lawyers must strive, that is, to not only follow the Rules because they should but, as King says, "because it is right!" To allow the indigent access to justice or to require a lawyer to provide services is to desegregate, but to accept it as the right thing to do, and to welcome poor clients as we do the rich, is the only way to ensure equality of all persons. It is time lawyers begin their own civil rights movement in hopes of integrating the poor into a society where all members feel a sense of community and none are shunned because of economic status.

Jessica M. Martin

Fulfilling our ethical obligation to perform pro bono work is necessary as a condition of our profession, as well as necessary to the interests of our country's indigents. Doing our best to help others is also crucial to our connection to other human beings. The difficulty arises in whether this obligation should be enforced by law or merely by morals. In Martin Luther King's speech, he addresses this issue in the context of forcing segregation. He states: "Judicial decrees may not change the heart, but they can restrain the heartless. The habits, if not the hearts

of people, have been and are being altered everyday by legislative acts, judicial decisions and executive orders.” This same logic can be applied to the idea of mandatory pro bono work. If lawyers choose not to undertake their ethical obligations, the law may step in to ensure that they do. Unfortunately, however, it is only when people act based on their hearts and moral compass that they truly grow from the experience and give fully to others.

Anne Buck

Just as Dr. King was aware that laws passed requiring citizens of the United States to treat African Americans equally would not solve the problem of racism, it would be simplistic to think that rules of professional conduct could do the same for attorneys. “Changes in human affairs and imperfections in human institutions make necessary constant efforts to maintain and improve our legal system.”³ A lawyer’s education and experience makes him or her especially qualified to recognize when there are deficiencies in the legal system and initiate corrective measures.⁴ An awareness of an “ethic of care” and a goal toward altruism will not make all attorneys free from moral deception, but it can guide them to view ethical responsibilities beyond those contained in rules of conduct.

Beth Kanous

You must not steal. You must pay your taxes. You should not be greedy. You should be charitable. Society is ruled by a complex combination of shoulds and musts. Musts will be followed consistently; shoulds will be followed when convenient. We can impose laws and rules on society to encourage or discourage certain types of behavior, but

a change in action does not necessarily reflect a change of heart. The Model Rules of Professional Conduct attempt to create an environment where a culture of ethics in the legal community can begin to develop, and go further when they state, “no worthwhile human activity can be completely defined by legal rules. The Rules simply provide a framework for the ethical practice of law.” Dr. Martin Luther King, Jr. stated it best: “[T]he ultimate solution to the . . . problem lies in the willingness of men to obey the unenforceable.” It is up to the legal community to embrace a culture of ethical practice.

Pat Selby

Dr. King’s perspectives on the ethical demands for integration provide a framework to explain a lawyer’s broader ethical obligations to individuals, to the demands of freedom, and to society as a whole. *Brown v Board of Education* and the successful elimination of Jim Crow laws gave him hope that segregation would rapidly be eradicated. While legal segregation no longer exists, the de facto condition persists, to the detriment of American society. Dr. King was right—when we are not truly integrated, we are not free. Despite the progress of the more than 40 years since that speech, it is clear that much remains to be done.

One solution is reflected in the concept that “much is required from those to whom much is given.” Lawyers are privileged, blessed with analytical training, skills to influence, and access to power. They are well-(some would say over-) represented in government and in influential positions in public life. As public citizens, they must use their skills and attributes to address societal failings, and to preserve human dignity and community and freedom. It may not be ex-

pressly stated in the rules, it may not be enforceable, but it is the right thing to do.

Kathryn Bruner

As Dr. King pointed out, improvement of the law or other policies tends to flow from people who push the boundaries to the point where unjust rules must sometimes be transgressed in order to expose its faults. In fact, the event where King gave this inspirational speech, a conference entitled “The Ethics of Integration,” was authorized by an administrator of Vanderbilt University’s Law School, despite the school’s policy on segregation. While no direct punishment was imposed upon the unknown administrator, his action resulted in the school losing control of the scheduling of outside events in their facilities. Subsequently, such arrangements were made through the university’s provost office. When balancing his obligation to follow school policy and his own conscience, the administrator chose to fulfill his obligation to his higher ideals. Assuming that it was a conscious choice on his part, this is exactly the kind of balancing test lawyers should use in their professional decisions.

The Rules provide a basis for ethical behavior toward clients and the legal system, but King’s speech reminds us that passive adherence to the minimum standard may be adequate to desegregate the nation, but will never amount to full integration. Our goals of equality and domestic tranquility can only be served by a more active approach in our profession to social and economic diversity. ♦



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FOOTNOTES

1. The Writing Across the Curriculum program at the University of Detroit Mercy School of Law requires every course after the first year to have a writing assignment worth at least 15 percent of the final grade.
2. King, Martin Luther, Jr., “The Ethical Demands of Integration,” *A Testament of Hope: The Essential Writings and Speeches of Martin Luther King, Jr.* (New York: Harper Collins, 1986).
3. Model Code of Prof Resp EC 8-1 (ABA 1983).
4. Id.