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It may not, after all, be difficult to be a *nunc pro tunc* prophet, but it takes real imagination to think of it. Hindsight is quite another matter; all of us are constantly explaining how a better decision years ago would have made for a happier world today. But to think in 1947 of assuming oneself to have been prophesying in 1897 as to what would be the state of affairs fifty years thence reveals an imaginative gift of some magnitude. Not only does it offer a sure-fire guaranty of accuracy of prediction, but also it dramatizes the fallibility of a genuine 1897 prophet who is operating *in futuro* and not *nunc pro tunc.*

Elliott Cheatham, in a mischievous mood, made this all very clear over twenty years ago. Establishing himself at a point near the end of Queen Victoria's reign, he proved beyond any reasonable doubt how incredible then would have been any prediction of what became the actualities of 1947.[1] Not only that, but as recently as 1963 he had the temerity, with a certain engaging complacency, to glory both in his achievement and his technique in attaining it.[2] But even Achilles is said to have had a weakness, and so it is with Professor Cheatham's retroactive prophecies. Never, either in 1947 (as of 1897) or in 1963 (as of 1913), did he predict the position in esteem, admiration, and affection that he himself would occupy, come 1968. Nor, as a matter of fact, would his ingenuity have been capable of it, for to have done so would have been altogether inhibited by the humility that has so pervaded his every achievement.

His interest in lawyers, their conduct, and their professional associations is my first concern here. That is an interest that has been with him for a long, long time. Others will pay full tribute elsewhere to his contributions in other fields.

It was nearly thirty-five years ago, in speaking of the legal profession, that he said:

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1. *Legal Education—Some Predictions,* 26 TEXAS L. REV. 174 (1947).

2. *The Need for Specialized Legal Services,* 16 VAND. L. REV. 497, 499 (1963). This was further reconfirmed in E. CHEATHAM, A LAWYER WHEN NEEDED 89 (1963).

> We enjoy a law-created monopoly as aids in the performance of functions that everywhere are essentially governmental; at the same time, we are enlisted in the private service of the battling elements of a competitive society whose struggles are often sharp and desperate.[3]

And it was only three years ago that he said, in introducing a symposium on the Canons of Ethics:

> We have an extraordinarily difficult position as lawyers today. We have an adversary system inside of a competitive system, dealing with human beings in a rapidly changing world.[4]

He has, I think, phrased this thought most happily in his statement that "[t]he American lawyer is a paradox within paradoxes."[5]

This perception of the place of lawyers in an adversary system set within a competitive economy has led Elliott Cheatham down two parallel channels of application—the function of the practitioner and the function of those who educate him and launch him on his career. In each, the dominant, the all-commanding thought has been *responsibility,* and underlying this responsibility has been *service,* service to client and to community.

This appears especially in his discussion years later of what in 1934 he had described as a "law-created monopoly." This was in a symposium on group legal services, and he was translating into modern vernacular the words *noblesse oblige*—translating them as *"privilege brings responsibility."*[6] (the italics are his). No one in all time has more deeply sensed or more consistently followed that principle than Elliott Cheatham.

As all the world knows, the most telling expression of his own sense of this obligation is found in his Carpentier Lectures at Columbia in 1963.[7] To read these is to realize too that behind the author's depiction of the needs of the three groups he discusses, groups that are inadequately provided with legal assistance, is a deep understanding of and compassion for the needs of human beings. No mere abstractionist is speaking here, no one coldly evaluating untapped sources of law business. Quite otherwise, for here is a warm-

3. His review of casebooks by Herschel W. Arant and George P. Costigan, Jr., 47 HARV. L. REV. 1295, 1296 (1934).

4. Introductory remarks at a round-table discussion on *A Re-Evaluation of the Canons of Ethics,* at the Association of American Law Schools Annual Meeting. Chicago, Illinois, December 29, 1965, reprinted at 33 TENN. L. REV. 129 (1966).

5. A LAWYER WHEN NEEDED 4 (1963).

6. *Availability of Legal Services: The Responsibility of the Individual Lawyer and of the Organized Bar,* 12 U.C.L.A.L. REV. 438, 439 (1965).

7. Published as A LAWYER WHEN NEEDED (1963).

hearted human being who is sensing the unameliorated plight of the least fortunate among us and directing the attention of lawyers and bar associations to needs that must not be left unmet.

Unlike many others, he has not confined his concern to the plight of a single group. "The hated," as he calls them, are not only the politically unorthodox but include as well members of feared or despised minorities, even persons accused of the most despicable of crimes. In expatiating on their needs for counsel, he does not fail to face frankly the possible costs in public esteem, even clientele, to the lawyer sensitive enough and brave enough to undertake their representation.

He deals compassionately with the unhated, and hitherto unheeded, poor and portrays the shortcomings in legal services available to them despite a steadily awakening bar. As for persons of small means, he categorizes them as now the most forgotten of all the groups.

His concern is more than fact-stating and exposition; it extends to discussion of ways and means of making services available—legal aid (both privately and publicly financed), public defenders, and lawyer referral plans. He speaks at length of the problem of specialization where even affluent clients have little practical means of identifying lawyers of special competence.[8] We have here, though on another economic level, a problem of relating client to specialist and, often too, of the ambiguous part played by the generalist. Here too are risks that the generalist may lose face by referring the client and that the client may find himself with two fees to pay. The frank fashion in which Professor Cheatham faces these risks, even as he has others, is quiet testimony to the objectivity that qualifies all his concerns.

This objectivity is particularly clear in his discussion of another risk—the risk that concentrations of economic power, whether in big business or in big labor, may impinge on the public interest. Here he finds a new opportunity for lawyers, for the measure he proposes is "the limited one of representation of the public interest in the process by which the two contending powers make their decision. . . . The mere presence of the public representative may bring about . . . an

8. *See* note 2 *supra*. This problem is emphasized in his book, A LAWYER WHEN NEEDED (1963), and it is of interest that C.P. Harvey, in reviewing it, expressed the view that the separate functions of solicitor and barrister in England obviated several of the difficulties we face in this country. 27 MODERN L. REV. 745, 747 (1964). But Professor Cheatham had anticipated this very comment. *See* A LAWYER WHEN NEEDED 94 (1963).

awareness of another dimension of meaning and judgment" [quoting Reinhold Niebuhr]. "[C]onciliation rather than decision is the wise method of adjustment. . . . And good lawyers are good conciliators." Elsewhere he has spoken of "imagination and resourcefulness," and the proposal he has made here well illustrates where those qualities may lead when guided by deep conviction as to the opportunities and obligations of the lawyer in respect to the public interest.[9]

Professor Cheatham's contributions to the Boulder Conference of 1956 repeatedly revealed this broad concern. Although at one time he felt the necessity of explaining why he had, as he believed, so vigorously emphasized the responsibilities of the lawyer as a private practitioner,[10] as a matter of fact, the views he expressed throughout the conference revealed his conception of the lawyer in the broadest frame of reference. Public responsibility, he felt, "imported three elements: basic values, social processes and the lawyer's relation to these."[11]

Nor should his viewpoint as to the responsibilities of the practicing bar be left without an appreciation of his abiding faith that they can, and ultimately will, be carried out. Thus he pays tribute to "a reinvigorated American Bar Association; stronger State bar associations . . . ; organizations directed to the improvement of the substantive and procedural law . . . ; judicial conferences, councils and law revision commissions; the continuing ferment in legal education . . . ; [and] the long sustained efforts" to provide needed legal services.[12]

In an ultimate sense, his contributions to legal education are also contributions to the practice of law itself. The law school years shape the years ahead. Whether the law school years comprise an inculcation of a perception of the values that constitute a sense of responsibility is not beyond controversy, but there is no doubt that Professor Cheatham has firm confidence that they do, and in this I

9. A LAWYER WHEN NEEDED 120, 123 (1963). Vigorous exception has been taken by one reviewer, a practitioner, to this suggestion; it is "rather far afield from the pressing practical problems within the direct responsibility of the organized bar." Sykes in 24 MD. L. REV. 224, 228 (1964).

10. He felt it important, he said, to "redress the balance in discussion," since the conference had been directed principally toward the education of lawyers in public aspects of their calling. The proceedings of this conference were later edited and substantially recast by Julius Stone. They were published as J. Stone, LEGAL EDUCATION AND PUBLIC RESPONSIBILITY (1959). Professor Cheathman's observation is found at 371, in his supplemental statement.

11. *Id.* at 73.

12. Quoting in part from his review of THE AMERICAN LAWYER by Albert P. Blaustein and Charles O. Porter, 4 J. PUB. LAW 170, 173 (1955).

am happy to endorse him most warmly. He believes that this is a function that law schools can helpfully perform and that, in fact, such is their particular obligation.

The initial edition of his *Cases on the Legal Profession* (1938) was not the first attempt of law teachers to provide teaching materials for a separate course,[13] but it has had the most survival value. Perhaps this is due to what an able reviewer found in it—"a sense of motion, progress, experimentation, adjustment to social and economic conditions."[14] Certainly it is a refreshingly frank approach to the actual conduct of lawyers, free of what Max Radin called "the solemn unction and lyric exhaltation of the ardent ministers of a cult."[15] Moreover, it introduced, to a degree not attempted before, the use of materials other than court opinions and thereby treated problems not previously accessible; for example, the lawyer in his office and the lawyer's relations to legislative bodies.

In his Second Edition (1955), he expanded these materials markedly and introduced an emphasis on what he called "the affirmative loyalties of the lawyer, not on the negative restrictions." His purpose was redirected toward "the development of a sense of professional responsibility through identification of the individual lawyer with something beyond himself and his clients." As has already been noted, this has long been a major emphasis in his viewpoint, and here it is reflected in discussions of the lawyer as negotiator and as an activist in law reform, as well as treatment of the function and objectives of legal education, most pleasingly adorned by a diverting conversation between "Two Law Students and a Teacher."

There have been other excellent casebooks in this area, but none has opened wider the vistas of professional responsibility than Elliott Cheatham's *Cases on the Legal Profession*. By virtue of it, generations of students, now actively in practice, have been exposed to the information, to the values, to the decision-making, and, above all, to the opportunities that characterize our profession. They, and the many teachers who have used it, owe him a lasting debt for the illumination and guidance this book has provided.

Professor Cheatham's writings, listed elsewhere in this issue, are too numerous for individual examination here. At least thirty-five

13. Both Costigan's (1917) and Arant's (1933) casebooks were earlier, as was Hick's text, ORGANIZATION AND ETHICS OF BENCH AND BAR (1932).

14. Bradway, Book Review, 38 COLUM. L. REV. 1134, 1138 (1938).

15. Radin, Book Review, 24 CORNELL L. Q. 462 (1939).

years ago he was contributing generously, always wisely and helpfully, to the long lineage of his criticisms, comments, and recommendations for the educating of law students in a perceptive understanding of their responsibilities as lawyers. He participated in numerous symposiums, always striking a note of firm optimism that the schools can in faet communicate such a perception and insisting that they are obligated to undertake the effort.

His participation at Boulder in 1956 was characteristic. He helped plan the conference, select the agenda, and invite the participants. The transcript is pervaded with his wise comments. As Julius Stone well stated, he has "the gift of succinct summation." At the conclusion of the Boulder Conference a statement was adopted by consensus; it had been prepared by Professor Cheatham. Its final paragraph reads:

> Too often lawyers accept the standards of their clients where instead they should be exercising the judgment of an independent calling; where they should be asserting the freedom to use their high proficiency in the service of their public as well as their private responsibilities. The law schools have a unique opportunity and responsibility to transmit, encourage and develop this full sense of obligation.[16]

In concluding, I can do no better than recall the apt characterization with which Shelden Elliott once ended his book review. Referring to Elliott Cheatham as a "modest, kindly, strength of intellect," he spoke of his *Cases on the Legal Profession* as "a tribute to those same unique qualities—qualities which have earned him the respect and affection of the practicing bar, his fellow law teachers, and his students."[17] To which I would add only this thought: that his contribution to the solution of the most baffling of pedagogical problems—the inculcation of a sense of professional responsibility in law students, and thereby in practitioners—has not only been outstanding; it has been unique. His character, his intellectual stature, the depth and clarity of his convictions, his ideals, his vision, and his great gift of communication have long set him apart. Inexperienced though I am as a prophet, I will not hesitate to predict in all confidence, *in futuro* and not at all *nunc pro tunc*, that the law men of the year 2018 will look back upon him with lasting appreciation and gratitude.

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16. Stone, *Supra* note 10, at 359.

17. Elliott, Book Review, 4 J. PUB. LAW 447, 451 (1955).

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