United States v. Nixon / The Legacy of Watergate: Rethinking Legal Ethics—Answer Key

The Watergate scandal of the early 1970s resulted in increased attention to the regulation of the legal profession. Beyond public outrage at efforts by President Nixon to coverup the break-in at the headquarters of the Democratic National Committee, the American public was also disturbed by the number of lawyers involved in the scandal. Virtually all of the main actors in the scandal were lawyers. Some 29 lawyers were the subject of disciplinary proceedings as a result of Watergate.

Traditionally states, as opposed to the federal government, serve as the primary regulator of legal ethics in this country. The majority of states have rules patterned after the American Bar Association's (ABA) Model Rules of Professional Conduct. This is a set of guidelines that help states craft ethical rules for lawyers. The American Bar Association is a voluntary professional organization with 400,000 members that assists lawyers and judges in their work and promotes efforts to improve the legal system. Violations of a state's rules of professional conduct can result in disbarment (suspension of a lawyer's license to practice law).

One of the most important ethical rules for lawyers is the right to keep attorney-client communications confidential. Many believe it is necessary to allow clients to talk openly with their attorneys and gain advice about how to properly comply with the laws or form proper defenses and legal strategies. However, during the Watergate scandal, it seemed that many lawyers were aware of and even assisted in fraudulent activities and tried to use confidentiality and their role as attorneys to escape punishment. For example, two top attorneys involved were fully aware of the plans for the break-in. If either one had reported the misconduct, the nation likely would have been spared the Watergate scandal. But the attorneys did not reveal their knowledge of the future crimes and instead later used their status as lawyers to defend their actions. Many people were frustrated by what they viewed as lawyers using the rules of confidentiality and other rules of professional conduct to avoid responsibility to society.

The legal profession responded to Watergate in a few ways. New emphasis was placed on professional responsibility courses in the law schools. For the first time, by the late 1970s, every law school in the country offered a course on professional responsibility. Bar examiners increasingly added professional responsibility to those subjects tested on the bar exam (tests required for a lawyer to get a license to practice in a particular state). The American Bar Association, which had only a few years earlier adopted the Model Code of Professional Responsibility, also embarked on a project that would lead to the wholesale revision of the Code.

Interestingly, the federal government did not itself seek to regulate the legal profession. Rather, reforms in the legal profession in response to Watergate were led by the ABA, the state courts, and the state bar associations.

Questions to Consider

1. As discussed above, confidentiality is an important part of an attorney-client relationship. Since Watergate, most ethical rules allow an attorney to reveal a client's confidences if they relate to a future crime or a fraud but not a past crime. Furthermore, ethical rules generally require a lawyer to remove themself from representing any client who has tried to use the lawyer's services to assist in a crime or fraud. Why would ethical rules make a distinction between confidences based on whether they relate to future or past crime? Debate the wisdom and effectiveness of such a rule.

   Student answers will vary. It is important to the attorney-client relationship that clients feel that they can speak candidly with their attorneys in order for their attorneys to fully understand their cases, give meaningful advice, and fashion an appropriate legal strategy for the particular problem. It is important to effective representation that the attorney be fully aware of the client's past actions, even if it relates to past violations of law. However, it is also important that a lawyer not use his intricate knowledge of the law and position to further a crime or fraud. Furthermore, clients who plan to engage in future wrongdoing should not have the protection or assistance that confidentiality affords.

2. What are the advantages and disadvantages of leaving ethical rules to state regulation rather than federal regulation?

   Student answers will vary. Generally, state regulation allows the legal profession to retain a somewhat local flavor and ensure that rules and standards reflect the particular needs of the state in which the lawyer practices. State regulation is arguably easier to manage than on federalized system. On the other hand, federalization would likely result in a uniformity of standards across the country. Therefore, all American lawyers would be held to particular rules regardless of the jurisdiction in which they practiced. However, agreeing on specific rules that take into account diverse interests and practice tendencies could be quite problematic.

3. *Optional extension activity:* Talk to a local attorney or contact your state bar association to learn the applicable legal rules in your state.