The Lawyer's Duty to Himself

Thomas W. Christopher*

An attorney has a duty of loyalty and fidelity to the client that is peculiar to the legal profession. But there are limits on this duty, and I want to comment on one of these. This is the obligation or lack of obligation of the attorney to represent or speak out for the interests or views of the client in non-lawyer-client activities. Many lawyers represent only a particular type of client, as contrasted with the general practitioner of old who took cases and clients as they came. Thus, one lawyer does mostly damage suits; another represents corporations and banks; another represents minority groups and labor unions. As a member of the legislature, in his club or church, in town hall discussions, should the lawyer expound his own views or those of his clients?

This is an ethical question of some importance, for in its ultimate significance it involves the integrity of the legal profession. If attorneys are merely paid, skilled spokesmen even in their duties as citizens, then the profession as a profession is not likely to command or deserve the respect of the community. Playing the disciplined role of advocate in the process of litigation is good; speaking in the role of attorney for the client before a committee of the legislature is good. But in his role as a citizen or as a public official, the lawyer is expected, or should be expected, to act and speak as an individual, not as an agent saying what he is told to say.

We can all agree on this general, moral issue, for it is self-evident. In a classroom discussion on the subject, the path for the lawyer is clear. But in actual life, there is an additional facet of the situation to be considered, for like most problems, this one is not subject to a simplistic analysis.

It is not easy for the lawyer whose livelihood comes from representing labor unions (or corporations) to publicly advocate an anti-union (or anti-corporation) position. If he does so, the raw fact is that he likely will lose his clients and his livelihood. Economics thus are in the picture, and no progress is made by bluntly asserting that the lawyer should act regardless of the effect on his livelihood. Economics is not an irrelevant part of the question, at least within moderate bounds.

*Dean and professor, The University of Alabama School of Law. Author (with Goodrich), CASES AND MATERIALS ON FOOD AND DRUG LAW (2d ed).
How far, ethically and morally, should a lawyer allow personal economics (holding clients) to influence his actions in his non-advocate role? An extreme case arises where the lawyer's client wants the lawyer to condone murder; we can all agree in that situation that the lawyer has no choice and must act on principle, regardless of the loss of income. But the issue is normally less sharp than this. The resolution of the question may also depend on the platform from which the lawyer speaks. As a member of the city council or the legislature, he represents the community. Economics—holding clients—can play no role in his vote. When as a citizen he votes at the polls on an issue or for a candidate, the answer to the conflict is less in focus, less easy to enunciate in clear tones. A farmer favors farm legislation because it helps him economically. In many situations the lawyer as a citizen moves on private and public questions from a selfish point of view. He is human. Every group does the same. But where is the line? To say that economics and holding clients are not irrelevant considerations is not to solve the problem in the particular case of balancing the obligations and desires that one has.

We recognize, then, that the issue is not solely one for classroom theory, that there is justification for at least some practicality. If the lawyer as a citizen feels that the new courthouse should be built of yellow bricks, but knows that he will lose his best client if he says so, most people would agree that it is wise and not dishonorable for the attorney to go along with red brick.

The solution to this question of where to balance between client wishes and personal duty to self lies in the moral and ethical realms, and in the end each lawyer must answer for himself. Nevertheless, it may be that lawyers are leaning too far toward economics, and I think that we are. Lawyers, I suspect, are less independent now than formerly. One result is that the community, the nation, does not receive the benefit of the hard thinking of the full lawyer group. A second result is that the bar is in danger of a diminution of its influence. If we have a reputation as mere actors, we will not command respect.

This is not to say in these situations that the lawyer necessarily is consciously untrue to himself. What often happens is that the attorney gradually and slowly adopts the views of his clients, and in a little while he believes what his clients believe. This, in effect, is brainwashing. The modern practice where the lawyer represents a client or clients on a regular, continual basis, more or less as a regular employee, as contrasted with representation only in a partic-
ular lawsuit or business matter, is of primary significance; under such circumstances, it is easy for the attorney to lose his independence. But whether the lawyer acts knowingly or unknowingly in adopting the client’s views, what is involved is the individuality of the lawyer as a citizen and as a person.

There is another aspect of this whole matter of duty to self that merits consideration, an interesting aspect that has received much shallow comment in recent years. This deals with the question of what kinds of clients a lawyer should represent. Should he represent a spy, a Communist, a gangster? Community or client pressures frequently are successful in causing the attorney to turn away a prospective client. In some communities only a daring lawyer will give a full and vigorous defense to a member of a minority group (racial, political, etc.) accused of a serious offense, and there may even be no such local attorney available. We tend to think that such pressures are brought by unthinking or ignorant people, but, in truth, this same “mob” spirit against the lawyer sometimes (often?) exists even in the intellectual or quasi-intellectual community. A lawyer may feel pressure from his peer intellectual group (or from the college campus) if he defends a Communist—but not if he defends the Klu Klux Klan. Or vice versa. Or if he defends either. Or if he defends Christianity but not if he defends atheism. Or vice versa.

It may be that we are making progress in this area and that a lawyer is more free now than he was forty years ago to take on an occasional unpopular client. The practice of criminal law, for example, is a respectable specialty now. An ordinary attorney, as well as a John W. Davis, now has freedom occasionally to give a vigorous defense to a murderer, a vote stealer, a traitor, a draft dodger, a conservative or a radical politician. But, to a degree, we have misplaced one forbidden fruit with another. Formerly, a “respectable” attorney did not work full time (or had difficulty in maintaining his standing and status if he did so) at criminal law, or at defending the poor, or at serving labor unions. A labor lawyer such as Arthur Goldberg would not have made the Supreme Court fifty years ago. But where is the progress? The upward movement? Now there is articulated opinion of some strength among law professors, law students, and groups of practitioners against attorneys choosing to represent corporations, business, the rich, even the middle class. For a law student to aspire to be a “business” lawyer is frowned on—a student may have difficulty in being in the “in” group in the law school, in the intellectual community, if that is his aim.
This is not only a narrow and unfair position, it is also counter to the liberal principles of great lawyers for 200 years of American jurisprudence. A welder does not hesitate to work for a corporation. To refuse medical services to a rich person is as evil as to refuse services to a poor person. A part of being a free being, of having dignity and self-respect, is to have flexibility in choosing what work one wants to spend his life at and with what group. And this is the point! The other fellow has the same right. Undue pressure on the student, the lawyer, to whip him into line with what we want to do is both cruel and destructive. The principle in our legal tradition, always there although not always in sight, is that the person, the group, the entity has a right to the very best legal assistance that can be had. The instances in recent years (some of which have included force against recruiters in law schools) of browbeating and shaming others into not following their desires to represent particular segments of society are not cause for pride. They simply represent anti-intellectual and anti-freedom forces.

This is not to say that law professors, law students, and the bar should not stress particular needs or try to remove prejudices. The efforts over the past few years to generate interest in the practice of criminal law and in representing the poor are both long overdue and highly commendable. But the correct practice is to seek a balance—to seek to bring neglected fields up on a par with the others, not to put the others down where the practice of criminal law once was. It is apparent that some professors, students, and lawyers are as intolerant and "wrong-headed" as the groups they oppose.

In this piece, then, I am putting forward two propositions which some law groups see only dimly now. First, the lawyer must seek to maintain his self-respect, to be true to himself, to have high moral and intellectual values, and to be a professional person rather than a courier. Second, all people and all entities in society have a right to expect the legal profession to provide quality legal assistance, and the lawyer who in a professional manner represents one person or entity is just as honorable as the lawyer who represents any other person or entity. The "silent" treatment should be reserved for the person who seeks by shame, noise, or intimidation of any sort to deter legal representation for a group that that person does not like. Some lawyers find fulfillment in being missionaries, others by serving the labor union or the corporation or the rich or the poor. They are all lawyers, part of a worthy and satisfying profession for which a free society has even greater need today than in days gone. High professional standards and highly competent performance are the hallmarks to judge by.