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Spring 1978

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Recommended Citation

Monroe H. Freedman, *Lawyer Doesn't Always Know Best - The Client's Wishes Must Not Be Ignored because of the Profession's Love Affair with Its Own Mysteries*, 7 Hum. Rts. 28 (1978)

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The client's wishes must not be ignored because of the profession's love affair with its own mysteries

by Monroe H. Freedman

It is a singularly good thing, I think, that law students, and even some lawyers and law professors, are questioning with increasing frequency and intensity whether "professionalism" is incompatible with human decency—asking, that is, whether one can be a good lawyer and a good person at the same time. I have a special interest in that question because at least one perceptive critic, Professor John T. Noonan, Jr., has drawn the inference from my book on lawyers' ethics¹ that I do not believe that a decent, honest person can practice criminal law or teach others to do so.²

Professor Noonan draws that inference, in substantial part, from my conclusion that a criminal defense lawyer will sometimes be compelled knowingly to present a client's perjury to the court, and to argue it in summation to the jury. I base that conclusion on such considerations as the sixth-amendment right to counsel, the fifth-amendment privilege against self-incrimination, and the obligation of confidentiality, under which the attorney induces the client to reveal all relevant information with assurances that the attorney will not act upon that information in a way that might injure the client. Thus I might ask rhetorically whether Professor Noonan believes that a good person can induce another to rely upon assurances of confidentiality, and then betray those confidences. The difficulty, of course, is that the lawyer is frequently faced with conflicting moral obligations: here, either to participate knowingly in the presentation of perjury, or else to violate the client's trust which the lawyer has induced.³

In view of that kind of moral dilemma, a cynic might conclude that one cannot be a good lawyer and a good person at the same time. I do not believe, however, that one can properly be charged with immorality because one is

presented with a moral dilemma. If that were so, the human condition would be one of guilt without realistic free will. On the contrary, I believe that in such circumstances, the only immorality lies in failing to address and to resolve the moral conflict in a conscientious and responsible manner.

At the same time that I discuss the issue of professionalism and personal moral responsibility, I will also consider an integrally related question, one that is often expressed in terms of whether it is the lawyer or the client who should exercise "control" in the relationship

between them. As it is frequently put: is the lawyer just a "hired gun," or must the lawyer "obey his own conscience and not that of his client?"⁴

Voicing a viewpoint prevalent in the profession, lawyers sometimes use the phrase "client control" (that is, control of the client by the lawyer) in expressing their professional pride in maintaining the proper professional relationship. In a law school commencement address titled "Professionalism in Lawyering," the Chief Judge of a federal Court of Appeals, Clement

A LAWYER DOESN'T

Alfred Gescheidt



F. Haynsworth, stressed the importance of professional competence in handling a client's affairs; but Chief Judge Haynsworth went on to say that of even "greater moment" than competence on the part of a lawyer is the fact that "he serves his clients without being their servant. He serves to further the lawful and proper objective of the client, but the lawyer must never forget that he is the master. He is not there to do the client's bidding. It is for the lawyer to decide what is morally and legally right, and, as a professional, he cannot give in to a client's attempt

to persuade him to take some other stand. . . . [T]he lawyer must serve the client's legal needs as the lawyer sees them, not as the client sees them. During my years of practice. . . . I told [my clients] what would be done and and firmly rejected suggestions that I do something else which I felt improper. . . ."⁵

Surely those are striking phrases to choose to describe the relationship of lawyer and client—the lawyer is "the master" who is "to decide what is morally . . . right," and who serves the client's needs, but only "as the lawyer sees them, not as

the client sees them." Even more striking is the phrase once used by Charles Halpern, a sensitive and dedicated public interest lawyer; as between the lawyer and the client, he observed, it is the lawyer who holds "the whip hand."⁶

Thurman Arnold, who was a prominent practitioner and also a federal appellate court judge, held a philosophy similar to Judge Haynsworth's. As described with approval by former Supreme Court Justice Abe Fortas, Arnold did not permit a client "to dictate or determine the strategy or substance of the representation, even if the client insisted that his prescription for the litigation was necessary to serve the larger cause to which he was committed."⁷

Critics of the legal profession argue not that such attitudes and practices are elitist and paternalistic, but rather that not enough lawyers abide by them.⁸ In an article on "Lawyers as Professionals: Some Moral Issues," Professor Richard Wasserstrom recalls John Dean's list of those involved in the Watergate cover-up. Dean had placed an asterisk next to the name of each of the lawyers on the list, because he had been struck by the fact that so many of those implicated were lawyers. Professor Wasserstrom concludes that the involvement of lawyers in Watergate was "natural, if not unavoidable," the "likely if not inevitable consequence of their legal acculturation." Indeed, on the basis of Wasserstrom's analysis, the only matter of wonder is why so many of those on John Dean's list were not lawyers. What could possibly have corrupted the non-lawyers to such a degree as to have led them into the uniquely amoral and immoral world of the lawyers? "For at best," Wasserstrom asserts, "the lawyer's world is a simplified moral world; often it is an amoral one; and more than occasionally, perhaps, an overtly immoral one."⁹

Professor Wasserstrom holds that the core of the problem is professionalism and its concomitant, role-differentiated behavior. Role differentiation refers, in this context, to situations in which one's moral response will vary depending upon whether one is acting in a personal capacity or in a professional, representative one. As Wasserstrom says, the "nature of role-differentiated behavior . . . often makes it both appropriate and desirable for the person in a

ALWAYS KNOW BEST



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particular role to put to one side considerations of various sorts—and especially various moral considerations—that would otherwise be relevant if not decisive."¹⁰

An illustration of the "morally relevant considerations" Wasserstrom has in mind is the case of a client who desires to make a will disinheriting her children because they opposed the war in Vietnam. Professor Wasserstrom suggests that the lawyer should consider refusing to draft the will because the client's reason is a "bad" one.¹¹ But is the lawyer's paternalism toward the client preferable—morally or otherwise—to the client's paternalism toward her children?

We might all be better served, says Wasserstrom, if lawyers were to see themselves less as subject to role-differentiated behavior and more as subject to the demands of "the" moral point of view.¹² Is it really that simple? What, for example, of the lawyer whose moral judgment is that disobedient and unpatriotic children should be disinherited? Should that lawyer refuse to draft a will leaving bequests to children who opposed the war in Vietnam? If the response is that we would then have a desirable diversity, would it not be better to have that diversity as a reflection of the clients' viewpoints, rather than of the lawyers'?

In another illustration, Wasserstrom suggests that a lawyer should consider refusing to advise a wealthy client of a tax loophole provided by the legislature for only a few wealthy taxpayers.¹³ If that case is to be generalized, it seems to mean that the legal profession can properly regard itself as an oligarchy whose duty is to nullify decisions made by the people's duly elected representatives.¹⁴ That is, if the lawyers believe that particular clients (wealthy or poor) should not have been given certain rights, the lawyers are morally bound to circumvent the legisla-

tive process and to forestall the judicial process by the simple device of keeping their clients in ignorance.

Nor is that a caricature of Wasserstrom's position. The role-differentiated amorality of the lawyer is valid, he says, "only if the enormous degree of trust and confidence in the institutions themselves [that is, in the legislative and judicial processes] is itself justified." And we are today, he asserts, "certainly entitled to be quite skeptical both of the fairness and of the capacity for self-correction of our larger institutional mechanisms, including the legal system."¹⁵ If that is so, would it not be a non-sequitur to suggest that we are justified in placing that same trust and confidence in the morality of lawyers, individually or collectively?

There is "something quite seductive," adds Wasserstrom, about being able to turn aside so many ostensibly difficult moral dilemmas with the reply that my job is not to judge my client's cause, but to represent his or her interest.¹⁶ Surely, however, it is at least as seductive to be able to say, "My moral judgment—or my professional responsibility—requires that I be your master. Therefore, you will conduct yourself as I direct you to."

A more positive view of role-differentiated behavior was provided in an article in the *New York Times* about the tennis star, Manuel Orantes:

"He has astounded fans by applauding his opponent's good shots and by purposely missing a point when he felt that a wrong call by a linesman has hurt his opponent.

'I like to win,' he said in an interview, 'but I don't feel that I have won a match if the calls were wrong. I think if you're playing Davis Cup or for your country it might be different, but if I'm playing for myself I want to know I have really won.'"¹⁷

In other words, one's moral responsibilities will properly vary depending, among other things, upon whether one has undertaken special obligations to one's teammates or to one's country.

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Taking a different illustration, let us suppose that you are going about some pressing matter and your arm is suddenly seized by an old man with a long gray beard, a wild look in his eye, and what appears to be an enormous dead bird hanging around his neck, and he immediately launches into a bizarre tale of an improbable adventure at sea. If he is a stranger and you are alone on a poorly lighted street, you may well call the police. If he is a stranger but you decide that he is harmless, you may simply go on to your other responsibilities. If he is a friend or a member of your family, you may feel obligated to spend some time listening to the ancient mariner, or even to confer with others as to how to care for him. If you are a psychiatric social worker, you may act in yet some other way, and that action may depend upon whether you are on duty at your place of employment, or hurrying so that you will not be late to a wedding—and in the latter case, your decision may vary depending upon whether the wedding is someone else's or your own.

Surely there can be no moral objection to those radically different courses of conduct, or to the fact that they are governed substantially by personal, social and professional context, that is, by role-differentiation. One simply cannot be expected, in any rational moral system, to react to every stranger in the same way in which one may be obligated to respond to a member of one's family or to a friend.

In an interesting and thought-provoking article, Professor Charles Fried has analogized the lawyer to a friend—a "special-purpose" or "limited-purpose" friend "in regard to the legal system." The lawyer is seen to be "someone who enters into a personal relation with you—not an abstract relation as under the concept of justice." That means, Fried says, that "like a friend, [the lawyer] acts in your interests, not his own; or rather he adopts your interests as his own."¹⁸

The moral foundation of Fried's justification of that special-purpose friendship is the sense of self,

the moral concepts of "personality, identity and liberty." He notes that social institutions are so complex that without the assistance of an expert adviser, an ordinary lay person cannot exercise the personal autonomy to which he or she is morally and legally entitled within the system. "Without such an adviser, the law would impose constraints on the lay citizen (unequally at that) which it is not entitled to impose explicitly." The limited purpose of the lawyer's friendship, therefore, is "to preserve and foster the client's autonomy within the law."¹⁹

Similarly, Professor Sylvia A. Law has written, "A lawyer has a special skill and power to enable individuals to know the options available to them in dealing with a particular problem, and to assist individuals in wending their way through bureaucratic, legislative or judicial channels to seek vindication for individual claims and interests. Hence lawyers have a special ability to enhance human autonomy and self-control." She adds, however, that "far too often, professional attitude, rather than serving to enhance individual autonomy and self-control, serves to strip people of autonomy and power. Rather than encouraging clients and citizens to know and control their own options and lives, the legal profession discourages client participation and control of their own legal claims."²⁰

The essence of Professor Fried's argument does not require the metaphor of friendship, other than as an analogy in justifying the lawyer's role-differentiation. It was inevitable, however, that Fried's critics would give the metaphor of friendship the same emphasis that Fried himself does. Perhaps inadvertently, therefore, they miss the essential point he makes, that human autonomy is a fundamental moral concept that must determine, in substantial part, the answers that we give to some of the most difficult issues regarding the lawyer's ethical role.

Thus, in a response to Fried, Professors Edward A. Dauer and Ar-

thur Allen Leff make some perceptive and devastating comments about the limited-purpose logic of Fried's metaphor of friendship. At the same time, however, Dauer and Leff express their own views of the lawyer's role and character, views which I find to be both cynical and superficial. They describe an "invariant element" of the lawyer-client relationship in the following terms:

"The client comes to a lawyer to be aided when he feels he is being treated, or wishes to treat someone else, not as a whole other person, but (at least in part) as a threat or hindrance to the client's satisfaction in life. The client has fallen, or wishes to thrust someone else, into the impersonal hands of a just and angry bureaucracy. When one desires help in those processes whereby and wherein people are treated as means and not as ends, then one comes to lawyers, to us. Thus, if you feel the need for a trope to express what a lawyer largely is, perhaps this will do: a lawyer is a person who on behalf of some people treats other people the way bureaucracies treat all people—as nonpeople. Most lawyers are free-lance bureaucrats...."²¹

Despite that caricature, Dauer and Leff manage to conclude that "a good lawyer can be a good person." They do so, however, by defining "a good person" in limited terms: "In our view the lawyer achieves his 'goodness' by being—professionally—no rottener than the generality of people acting, so to speak, as amateurs."²² The best that can be said for that proposition, I believe, is that it is not likely to stop students with any moral sensitivity from continuing to ask whether it is indeed possible for a good lawyer to be a good person.

The most serious flaw in Professor Fried's friendship metaphor is that it is misleading when the moral focus is on the point at which the lawyer-client relationship begins. Friendship, like love, seems simply to happen, or to grow, often in stages of which we may not be immediately con-

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scious. Both in fact and in law, however, the relationship of lawyer and client is a contract, which is a significantly different relationship, formed in a significantly different way.²³

Unlike friendship, a contract involves a deliberate choice by both parties at a particular time. Thus, when Professor Fried says that the lawyer's moral liberty "to take up what kind of practice he chooses and to take up or decline what clients he will is an aspect of the moral liberty of self to enter into personal relations freely,"²⁴ the issue of the morality of the decision to enter the relationship is blurred by the amorphous manner in which friendships are formed. Since entering a lawyer-client contract is a more deliberate, conscious decision, that decision can justifiably be subjected to a more searching moral scrutiny.

In short, a lawyer should indeed have the freedom to choose clients on any standard he or she deems appropriate. As Professor Fried points out, the choice of client is an aspect of the lawyer's free will, to be exercised within the realm of the lawyer's moral autonomy. That choice, therefore, cannot properly be coerced.

Contrary to Fried's view, however, it can properly be subjected to the moral scrutiny and criticism of others, particularly those who feel morally compelled to persuade the lawyer to use his or her professional training and skills in ways that the critics consider to be more consistent with personal social or professional ethics.²⁵

As I have stressed elsewhere, however, once the lawyer has assumed responsibility to represent a client, the zealotry of that representation cannot be tempered by the lawyer's moral judgments of the client or of the client's cause.²⁶ That point is of importance in itself, and is worth stressing also because it is one of the considerations that a lawyer should take into account in making the initial decision whether to enter into a particular lawyer-client relationship.²⁷

In disagreeing with Professor Wasserstrom's criticism of role-differentiation, I did not mean to suggest that role-differentiation has not produced a degree of amorality, and even immorality, in the practice of many lawyers. The problem, as I see it, is expressed in the news item I quoted earlier regarding Manuel Orantes. Playing for himself, Mr. Orantes has earned an enviable reputation, not only for his athletic prowess, but also for his good sportsmanship—if you will, for his morality in his relations with his adversaries. Yet when he plays with teammates and for his country, he adopts different standards of conduct.

I think that Mr. Orantes is wrong, in a way that many lawyers frequently are wrong. I do not mean that in Davis Cup play he is not bound by special, voluntarily-assumed obligations to others. On the contrary, he is bound by his role as teammate and countryman to accept the decision of his teammates, which may well be that each player should play to win, without relinquishing any advantage that the rules of the game and the calls of the judges allow. Where Orantes is wrong, however, is in preempting that decision, in assuming that their decision is that winning is all. Perhaps if he actually put the choice to them, Orantes' teammates would decide that they would prefer to achieve, for themselves and for their country, the kind of character and reputation for decency and fairness that Orantes has earned for himself. Perhaps they would not decide that way. The choice, however, is theirs, and it is a denial of their humanity to assume the less noble choice and to act on that assumption without consultation.

In day-to-day law practice, the most common instances of amoral or immoral conduct by lawyers are those occasions on which we preempt our clients' moral judgments. That occurs in two ways: most commonly we assume that our function is to maximize the client's material or tactical position in every way that is legally permissible. Since our function is not

to judge the client's cause, but to represent the client's interests, we tend to assume the worst regarding the client's desires. Much less frequently, I believe, we will decide that a particular course of conduct is morally preferable, even though not required legally, and will follow that course on the client's behalf. In either event, we fail in our responsibility to maximize the client's autonomy by providing the client with the fullest advice and counsel, legal and moral, so that the client can make the most informed choice possible.²⁸

Let me give a commonplace illustration. Two experienced and conscientious lawyers, A and B, once asked me to help them to resolve an ethical problem. They represented a party for whom they were negotiating a complex contract involving voluminous legal documents. The attorneys on the other side were insistent upon eliminating a particular guarantee provision, and A and B had been authorized by their client to forego the guarantee if the other side was adamant. The other lawyers had overlooked, however, that the same guarantee appeared elsewhere in the documents, where it was more broadly and unambiguously stated. Having agreed to eliminate the guarantee provision, with specific reference to a particular clause on a particular page, were A and B obligated to call the attention of opposing counsel to the similar clause on a different page? Or, on the contrary, were they obligated, as A put it, "to represent our client's interest, rather than to educate the lawyers on the other side?"

Each of the lawyers was satisfied that, if he were negotiating for himself, he would unquestionably point out the second guarantee clause to the other party. Moreover, each of them was more attentive to, and concerned about, questions of professional responsibility than most lawyers probably are—each of them, that is, was highly sensitive to the question of professional responsibility in a professional system. Yet it had occurred to neither of them that their profes-

sional responsibility was not to resolve the issue between themselves, but rather to present the issue to the client for resolution.²⁹

Our discussion thus far has related to decisions that are clearly in the moral or ethical realm. What of tactical decisions? Are those significantly different and therefore within the lawyer's ultimate control?

At one time I had the notion, based on fantasy, that Alger Hiss had no involvement with Whitaker Chambers' nefarious activities, but that Hiss' wife did. Assuming such a case, imagine Mr. Hiss' lawyer advising him that the only way to defend himself would be to tell the truth about his wife's involvement, and Hiss replying that, in no way, directly or indirectly, was his wife to be brought into the case, even if it meant an erroneous conviction for himself. In those circumstances, I find it hard to believe that even Clement Haynsworth or Thurman Arnold would insist upon conducting the case in such a way as to implicate the client's wife.³⁰

Arguably, however, that case represents a moral decision rather than a tactical one. On the one hand, there is the client's love for and loyalty to his wife. On the other, there is the possibility of a wrongful conviction, and the likelihood that the client will give misleading, or even false, testimony in the effort to avoid implicating his wife.

A recent case in New Jersey, *State v. Pratts*,³¹ would seem to come as close as possible to requiring a tactical decision unencumbered by moral considerations. In that case, the lawyer representing a criminal defendant had interviewed a witness who had given the lawyer a statement helpful to the defense. The lawyer learned, however, that shortly thereafter the witness had given the prosecutor a different statement, damaging to the defendant. The lawyer's decision, therefore, was that the witness should not be called. For similar reasons, of

(Please turn to page 51)

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involved—to get at the relevant sociological information, made his decision without information and perspectives that would have been available to anyone taking an undergraduate course in the field. Whether Judge Roth's decision was the correct one is not at issue here; rather the point is that the decision was appallingly uninformed by social science despite the judge's strong efforts to incorporate social science into the proceedings and the decision.

And, incidentally, about that part of his decision which was overruled,¹⁴ it does not take social science to realize that the flight to the suburbs is the most powerful segregationist tool in our society. The lines which purport to be city boundaries are far greater restrictions than "separate but equal." Judges may sit secure in their bailiwicks in Flossmoor and Newton and manipulate other people's children in other people's neighborhoods in the name of enlightened social science. But when they do so, they indeed violate both social science and its theory, as well as the most obvious common sense experience of driving across the street beyond the city boundary. Again, however, I would assert that the contribution of social science to a metropolitan approach to policy—and to policy-related judicial decisions—ought

to be auxiliary, supplementary and a minor footnote, rather than an occasion for a disgraceful oversimplification of a very modest intellectual discipline in the ideological crucible—which some of our adversary proceedings have become.

A word also ought to be said about the weakness of most social science indicators. We do our best with our instruments, and, if I may say so, some of our instruments are pretty good and getting better; but they are not microscopes or radio telescopes or any of the other fantastically elaborate and precise instruments of some other disciplines. No one should begin to think that they are.

I am endlessly amazed by the conflict over IQ tests. How could anyone take such an unreliable and indeed substantively undefined indicator all that seriously? As a general and vague measure of certain kinds of undefined intellectual abilities that are not all that important save in very gross ways, maybe IQ has some utility. But when I heard that the Irish were a standard deviation beneath the English in IQ scores in the British Isles, I said to hell with IQ. The point is, of course, that if judges and lawyers permit themselves to be further seduced into taking sociological evidence with terrible seriousness in the

courtroom, they are going to have to open up the whole can of worms of social science instrumentation.

Should sociology fold up then? Well, probably no great harm would be done if it did, save to the families and dependents of sociologists. But one could respond with the *ad hominem* but always effective argument of "you're another!" Should law fold up because it is often wrong and because its history is made up mostly of reversals? Indeed, if only the successful professions are allowed to stay in business, I fear the mathematicians will possess the earth—and then only because no one else can understand their failures.

As a rule of thumb, the more modest and restrained the sociologist, the more low-key his findings, the more gray his world, the more cautious and hesitant his policy suggestions (something like, "Well, metropolitan, voluntary, subsidized integration might help a little, I think."), the more likely he is to be a good witness in a court of law. What you will get from him, and you should value it, is a well-educated opinion and a sophisticated perspective. Do not expect anything else of him, for his discipline was never really designed to produce miraculous cures of social ills; and the good Lord knows that it has not surprised us by coming up with any such cures. hr

knowing best (Continued from page 33)

course, the prosecutor also refrained from calling the witness.

The defendant disagreed with his lawyer. Fully aware of the risks of calling the witness, the defendant decided that that witness was part of the case he wanted presented on his behalf. Apprised of the situation, the trial judge accepted the decision of the defense attorney, and the witness was not called. The defendant was convicted.

On appeal, the Superior Court of New Jersey affirmed. The court stated the issue to be not "whether there was an abuse of discretion" by the trial judge, but "who was

responsible for the conduct of the defense." The court held that "when a defendant accepts representation by counsel, that counsel has the authority to make the necessary decisions as to the management of the case."³² Quoting a federal appeals decision, the court added that the defendant "has a right to be cautioned, advised, and served by [court-appointed] counsel so that he will not be a victim of his poverty. But he has no right . . . to dictate the procedural course of his representation."³³

I think the court was wrong. At issue is not the lawyer's day in

court, but the defendant's—the defendant's right to trial, right to due process of law, and right to counsel.³⁴ As the Supreme Court has noted, under the Sixth Amendment, "the right to defend is given directly to the accused; for it is he who suffers the consequences if the defense fails."³⁵

Indeed, I would put the *Pratts* case, too, in the realm of morality. In a society such as ours, an essential purpose of a criminal trial is to manifest respect for the dignity of the individual.³⁶ Further, as we have already noted, a central element of human dignity is personal autonomy, particularly in matters

that affect our own lives as substantially as those in which lawyers are needed for assistance. Moreover, the "assistance" of counsel that is guaranteed by the Sixth Amendment is just that. In the words of the Supreme Court, "[A]n assistant, however expert, is still an assistant. The language and spirit of the Sixth Amendment contemplate that counsel, like the other defense tools guaranteed by the Amendment, shall be an aid to a willing defendant. . . ." Otherwise, "counsel is not an assistant, but a master," with the result that the right to make a defense is "stripped of the *personal character* upon which the Amendment insists."³⁷

As against those weighty considerations of human dignity and autonomy, which find expression in the Constitution, what reasons are there for the attorney to control such a decision? In *Pratts*, there would have been some saving of time at the trial. On the other hand, in a case in which the defendant prefers not to call a particular witness whom the lawyer wants to call, the client's decision would conserve time. In either event, the time element would not appear to constitute a compelling reason to deprive the client of the opportunity to make the decision in a matter of such importance to him. I suspect, in fact, that the real reason lawyers prefer to make the final decision, and judges are inclined to give it to them, is pro-

fessional pride, in the sense that the lawyer does not want the judge or any colleagues present to think that he or she is so unskilled as to have called a witness who is so vulnerable to cross-examination. Insofar as the lawyer's response would be that the lawyer's real concern is with the client's welfare, I think it is another instance of misplaced paternalism.

One of a just society's essential values is respect for the dignity of each member of that society. Essential to each individual's dignity is the maximization of his or her autonomy or, as Pope John XXIII expressed it, "the right to act freely and responsibly . . . chiefly on his own responsibility and initiative [and] . . . on his own decision."³⁸ In order to exercise that responsibility and initiative, each person is entitled to know his or her rights against society and against other individuals, and to decide whether to seek fulfillment of those rights through the processes of law. The lawyer, by virtue of his or her training and skills, has a legal monopoly on access to the legal system, and a practical monopoly on knowledge about the law. Legal advice and assistance are often indispensable, therefore, to the effective exercise of individual autonomy.

Accordingly, it is both professional and moral for the attorney to assist clients to maximize their autonomy by counselling them candidly and fully regarding their

legal rights and moral responsibilities as the lawyer perceives them, and by assisting them in carrying out their lawful decisions. But it is both unprofessional and immoral to deprive clients of their autonomy by denying them information regarding their legal rights, by otherwise preempting their moral choices, or by depriving them of the ability to carry out their lawful decisions.

Until the lawyer-client relationship is entered into, however—until, that is, the lawyer induces another to rely upon his or her professional knowledge and skills—the lawyer ordinarily acts entirely within the scope of his or her own autonomy. Barring extraordinary circumstances,³⁹ therefore, the attorney is free to exercise his or her personal judgment as to whether to represent a particular client. Since a moral choice is implicated in such a decision, however, others are entitled to judge and to criticize it on moral grounds.

Finally, those of us who teach law have a primary professional obligation to explicate the moral aspects of the law in general and of lawyers' ethics in particular.

If we—teachers and lawyers—conscientiously carry out those personal and professional responsibilities, then I do believe that professionalism is consistent with decency, and I therefore conclude that one can indeed be a good lawyer and a moral person at the same time. hr

FOOTNOTES

FROM NO RIGHTS

1. 430 U.S. 703 (1977).
2. 532 F.2d 880 (3d Cir. 1976).
3. 400 F. Supp. 326, 340 (E.D. Pa. 1975).
4. *Minor v. Happersett*, 88 U.S. (21 Wall.) 162 (1874).
5. *Hoyt v. Florida*, 368 U.S. 57 (1961).
6. *Bradwell v. Illinois*, 83 U.S. (16 Wall.) 130 (1872).
7. *Goesaert v. Cleary*, 335 U.S. 464 (1948).
8. The Court's landmark rulings in the 1973 abortion cases contrasted with the gingerly approach generally taken by the Court in sex-equality litigation. In *Roe v. Wade*, 410 U.S. 113, *rehearing denied*, 410 U.S. 959 (1973), and *Doe v. Bolton*, 410 U.S. 179,

rehearing denied, 410 U.S. 959 (1973) the Court struck down unwarranted state intrusion into the decision of a woman and her doctor to terminate a pregnancy.

Significantly, these opinions barely mentioned "women's rights." Rather, the pro-choice abortion rulings were anchored to a theory of personal autonomy derived from the due process guarantee.

Until June 20, 1977 it appeared that in this area, the Burger Court had embarked unswervingly on a bold course. The Court's reproductive-freedom decisions up to 1977 have been described as aberrational—highly active decisions from an otherwise passive bench. But in three stunning decisions announced June 20, 1977, *Beal v. Doe*, 97 S.Ct. 2366, *Maher v. Roe*, 97 S.Ct. 2376,