

Ethics Beyond The Practice: Lawyers Uniquely Qualified To Lead In Such A Time As This

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The topic of ethics is a vast one that has filled many volumes through the ages. This writing will be far from exhaustive on the subject. What I hope is that through this writing, our Bar Associations and its members will see their unique opportunity to lead our society through these difficult times.

Attorneys are uniquely qualified to lead in our society in these times for three reasons: our education, training and the nature of our work has instilled in us the necessity to see both sides of an argument; our liberal arts education has exposed us to a diverse body of knowledge that we can use to help inform society, and; attorneys have historically been involved in issues for social change, and we must return to it.

Society is in an uproar. If one were to take a tour of the societal landscape at one thousand feet above the ground, one would observe a state of confusion and disarray. In one section of this landscape, we see a political process that is uncivil, vicious, and full of attacks that have little to do with real issues. Another section of the hypothetical garden shows the social unease and ugliness brought on by equal rights to LGBTQ persons. The last third of our tour reveals a section that is burning and full of fighting. On either side of the fire one can hear a group shouting "Black Lives Matter," while on the other side they are shouting "Blue Lives Matter."

Necessity To See Both Sides

The J.D. is a multi-discipline degree that forces its seeker to critically think. Further, the classes in law school often require that students be able to argue both sides of an issue. When we look at the trio of confusion that is laid out above, this quality can come in handy. Too often in society, people stay in their silos; they stick with those who they identify with and never give the opposing side an honest look. Lawyers, on the other, cannot afford to be so narrow minded. In an attorney's everyday work, she is often forced to compromise and engage in a give-and-take, all while advocating for the position of her

client. If she is a criminal defense attorney or prosecutor, she must deal with plea negotiations. If she is a family law attorney or a family arbitrator, she must deal with divorce decrees and agreements on property settlements. If she is in other civil practice, she often has to negotiate settlements, agreements, contracts, and the like, all in a civil manner, and still considering her client's needs.

The most amazing thing about this exchange between lawyers is that the opposing lawyers are often friends. They are members of the same bar associations, sit on the same boards, are deacons at the same church, worship at the same synagogue, and are active members of the same fraternal organizations. Although they may disagree on an issue completely, yet after they make their arguments and the judge has decided, they can be found working the same charitable event or playing on the same soft ball team. In these turbulent times, the nation could benefit from that type of civility. Lawyers are uniquely suited to lead through participating in dialogue, civilly advocating for their point of view, but more importantly; showing communities how to come back together after the debate is done. Not only has the attorneys education and work prepared them for this, but the liberal arts aspect of the J.D. has equipped barristers with large body of knowledge to help foster constructive dialogue.

A Body of Knowledge That Informs the Conversation

Dean Jay Conison, former dean of the Valparaiso University School of Law, told the incoming 1L class of the law school in August of 2009 that the J.D. the students were working towards would allow them to do almost anything they could imagine. In fact, Dean Conison could only think of one thing that the degree would not qualify its recipient to do; practice medicine. While Dean Conison made this remark as an ice breaker to loosen the tension to nervous new 1L students, the truth is that the J.D. is a great liberal arts doctoral level degree that exposes its recipients to a plethora of information that spans many subjects, ideas, philosophies, and disciplines. Exposure to this type of education and this diverse body of knowledge should give attorneys a lot to say on many of the issues currently dividing the country. Although it seems that everyone, no matter their education, has something to say about the

current state of affairs, lawyers actually have the information to frame the conversation in a productive manner.

Attorneys have the knowledge to channel history, logic, reason, and even theology into a dialogue. They can speak on how the past has brought society to its current condition, make observation on how traditional dogmatic approaches to problems never bring a lasting solution, and help people find a productive path that comports with the tenants of their faith, personally held beliefs, and is good for the future of society. In fact, given the diversity of elective options an attorney may have studied while seeking her J.D., the value that she can bring to the table is virtually limitless.

The History of the Profession

Finally, attorneys should step up in our society because it has been the case historically. At the inception of this nation, lawyers were out front leading the charge for change. Of the 56 signers of the Declaration of Independence, 25 were lawyers.ⁱ Of the 55 framers of the Constitution, 32 were lawyersⁱⁱ. Lawyers like Robert Morris and President Abraham Lincoln lead the country out of slaveryⁱⁱⁱ. Here in Indiana, attorneys like Colonel George McDonald and Moses Tabbs, fought against slavery^{iv}. The Civil Rights movement was highlighted by figures such as Dr. Martin Luther King, Jr. and Malcolm X, but fighting the very real battle of change were attorneys like Thurgood Marshall arguing cases like *Brown v. Board of Education*.^v Even looking at the global landscape, lawyers like Nelson Mandela stand out for leading the movement for change in his society.^{vi}

Universal Application

How is this ethics? Why isn't this writing about being nice to other attorneys in court, not messing with client trust funds, and not misleading the court? Those ethical issues are dealt with daily in the practice. What is often overlooked is the responsibility that lawyers have to the society in which they live. Much has been given to attorneys. Some are wealthy because of the law, some have status and position because of the law, and all have given the privilege to be a part of this great practice and

profession. Generally defined, ethics are moral principles that govern a person's or group's behaviors. When attorneys hold to the principals of the oath which they swear to, these issues are clearing issues of ethics. The last line of the Indiana Oath of Attorneys states "I will never reject, from any consideration personal to myself, the cause of the defenseless, the oppressed or those who cannot afford adequate legal assistance; so help me God." Attorneys cannot look at the current state of affairs and choose to remain silent; that would be rejecting the principals of the Oath.

Where much is given, much should be required. Too often in this modern society, the only focus is on taking and receiving. Attorneys often jump from firm to firm looking for the best compensation package which they feel they deserve.^{vii} Attorneys have no problem participating in bar associations events and volunteering for their children's little league, but is that enough? With so many monumental issues facing the society and so many suffering, is that comfortable level of involvement sufficient to satisfy the privilege afforded attorneys by the practice?

No. Lawyers have an obligation to lead through times like these. Lawyers, who are officers of the court and ambassadors of the justice system, have a responsibility to give their expertise and knowledge for the good of society. Lawyers should be facilitating conversations about LGBTQ rights and their intersection with closely held religious beliefs. Attorneys should be calling community meetings where Black and Blue can discuss issues and seek understanding. Of all the political messiness that the current cycle has brought, lawyers, both those involved in the process and those simply voting, should demand the civility which is practiced every day in our courts.

With the advent of AVVO, LegalZoom, and similar quasi legal services that seek to replace attorneys and save potential clients money, the legal landscape has changed^{viii}. Additionally, more and more litigants are attempting to go through the legal system pro se. One might say that society no longer sees the value in good advocacy by attorneys. Possibly this is due to the perceived constant pursuit of profit by attorneys, or possibly by the deafening silence by the practice on very pressing

issues. Either way, the members of the bar can change this view. Attorneys must get involved in a meaningful way in the problems of society. Attorneys have the tools, the education, and the historical mandate to lead society through these difficult and turbulent times. To do any less borders on moral turpitude.

ⁱ United States Archives – The declaration of Independence
(http://www.archives.gov/exhibits/charters/print_friendly.html?page=declaration_signers_factsheet_content.htm)

ⁱⁱ United States Archives – founding fathers
(http://www.archives.gov/exhibits/charters/constitution_founding_fathers_overview.html)

ⁱⁱⁱ In Pursuit of Equality Smithsonian Institute (<http://americanhistory.si.edu/brown/history/2-battleground/pursuit-equality-1.html>)

^{iv} Bound for Freedom: the Case of Polly Strong (<http://www.in.gov/judiciary/citc/2654.htm>)

^v Biography of Thurgood Marshall – Biography.com (<http://www.biography.com/people/thurgood-marshall-9400241>)

^{vi} Biography of Nelson Mandela – Biography.com (<https://www.nelsonmandela.org/content/page/biography>)

^{vii} “How to Explain Job Hopping” by: Harrison Barnes. <http://www.hb.org/how-to-explain-job-hopping/>

^{viii} “LegalZoom Threatens Small Firms, Solos; But What About Big Law?” By: Ben Barten, Bloomberg Law
<https://bol.bna.com/legalzoom-threatens-small-firms-solos-but-what-about-big-law/>