



The
SERVANT
LAWYER

FACING *the* CHALLENGES of
CHRISTIAN FAITH *in* EVERYDAY
LAW PRACTICE

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CHAPTER ONE

THE CLIENT: “THIS PERSON GOD HAS BROUGHT INTO MY LIFE”



ONE OF THE THINGS Tom Shaffer noticed about the view of the courthouse from the church was that lawyers often do not treat clients very well. Professor Shaffer used to ask students to define “the client.” Those students who had had Legal Ethics scrambled to recall what they had learned. Was a contract required? Was the payment of a retainer required? Did it turn on client expectations? (A reminder to lawyers and law students: the last factor is most important, but that was not what Tom had in mind.) Tom said the lawyer should view each client as “this person God has brought into my life.” And, the client’s appearance in the lawyer’s office, or on the lawyer’s phone, or in the lawyer’s inbox, is the beginning of the lawyer-client relationship. Clients are the subject of our first chapter. We will explore the client’s place in the lawyer’s work. First, a warning about law school and law practice.

Challenge

Law school and law practice tend to depersonalize both clients and other people.

LAW SCHOOL, LAW PRACTICE, AND THE RISK OF DEPERSONALIZATION

Law school and law practice tend to depersonalize clients and the other people a lawyer encounters in law practice in numerous ways. In part, this comes from the law school experience of reading a barrage of cases in which people have suffered a significant loss. At the beginning of law school, law students are often troubled by reports of the death of a child, the destruction of a family's home, the embezzlement of an elderly person's life savings, or the loss of someone's sight. But after reading the thousandth such case, tragedies become routine. My friend Professor Jennifer Koh was struck (and touched) when a student in her first-year Criminal Law class, after reading a particularly troubling case, asked whether there was a place in class for "lament," while most of the students in the class were scrambling to see if they properly understood the elements of murder. In law practice as well, dealing with multiple cases in which clients or opposing parties or third parties suffer such losses or cause such losses can have a numbing effect.

Judicial opinions tend to depersonalize people as well. They exclude most of the personal aspects of the people involved. Often, they don't even use the names of the parties. They affectionately refer to the parties as "Plaintiff," "Defendant," "Appellant," or "Appellee." Professor (later Judge) John Noonan charts the tendency of law to depersonalize people in his book, *Persons and Masks of the Law*.¹ As Judge Noonan notes, in *Palsgraf v. Long Island Railroad*²—maybe the most famous first-year law school case—Justice Cardozo does not even mention Mrs. Palsgraf by name. Were it not for the title of the case and Justice Andrews's dissenting opinion, we would not even know the name of this person who suffered such traumatic injuries. (Maybe depersonalizing Mrs. Palsgraf made it easier for Justice

¹John T. Noonan Jr., *Persons and Masks of the Law: Cardozo, Holmes, Jefferson, and Wythe as Makers of the Masks* (Berkeley, CA: University of California Press, 2002).

²*Palsgraf v. Long Island R. Co.*, 248 N.Y. 339, 162 N.E. 99 (1928).

Cardozo to find that the Long Island Railroad owed Mrs. Palsgraf no duty.)

In law school, we professors try to teach students to “think like lawyers.” We teach them to “brief” cases, to identify the legal issues of the case and *only* the facts that are relevant to those issues. In class, we call on students to recite the facts of a case. During the first week or two of the first year, students drone on for a while before being cut off by the professor. The professor recites the *relevant* facts in a few sentences, including no *irrelevant* details about the parties. Students quickly become proficient at doing the same. Their written briefs do not even refer to the parties as “Plaintiff” and “Defendant”—they are reduced to “P” and “D.” I will quickly (and somewhat defensively) add that the practice of briefing serves an important purpose. By reducing the facts to those that are relevant to the resolution of the case, briefs enable law students and lawyers to focus on facts that might affect the outcome of the case. But it is easy to come to believe that these facts are all that is important about a case and the people involved. Clients and other people affected by the case become mere occasions for advocacy, and lawyers learn to develop a distant, “professional” stance.

Leo Tolstoy’s *The Death of Ivan Ilyich* captures the harm such a stance can have on people by putting a lawyer (and the reader!) in the client’s shoes. The book traces Ivan Ilyich’s development through law school, into law practice, and onto the judicial bench. After several years of climbing the ladder of success, Ivan falls from a real ladder, suffers a significant injury, and visits a doctor. Ivan finds that the doctor has an “exaggerated air of importance (so familiar to him since it was the very air he assumed in court).”³ Ivan wants to know:

Was his condition serious or not? But the doctor ignored this inappropriate question. From his point of view it was an idle question and not worth considering. . . . It was not a matter of Ivan Ilyich’s life but

³Leo Tolstoy, *The Death of Ivan Ilyich*, trans. Lynn Solotaroff (New York: Bantam, 1981), 76.

a conflict between a floating kidney and a disease of the caecum. . . . This was exactly what Ivan Ilyich had done a thousand times, and in the same brilliant manner, with prisoners in the dock.⁴

Ivan again inquires whether his condition is serious:

The doctor cocked one eye sternly at him over his glasses as if to say: “Prisoner, if you do not confine yourself to the questions allowed, I shall be obliged to have you expelled from the courtroom.”⁵

Law schools and medical schools train lawyers and doctors to deal with technical problems. The danger is that students can come to see clients and patients as mere technical problems to be solved. Aspects of the client’s life beyond the technical problem are unimportant. As in the case of Ivan Ilyich, the impersonal treatment by the professional can add to the pain of the injury.

Challenge

Lawyers can come to see the client as merely a technical problem to be solved.

In law cases, lawyers often encounter people going through the most traumatic experiences of their lives. If a lawyer does not view the client as “this person God has brought into my life,” there is a risk the lawyer will reduce the client to this \$100,000 retainer, this occasion for advancing my career, this interesting antitrust case, or this not-so-interesting trust and estates case. I learned something about the value of clients in one of my first cases.

CREATION AND CLIENT DIGNITY

Encounters in the jail and at a sentencing hearing. Shortly after law school and a judicial clerkship, I went into law practice with a law firm. Part of the firm’s public service was that its lawyers signed onto the local court-appointment list, offering to take on indigent criminal defendant clients for minimal pay. After a few months of law practice,

⁴Tolstoy, *Ivan Ilyich*, 77.

⁵Tolstoy, *Ivan Ilyich*, 77-78.

a judge appointed me to represent a young man who was charged with several felonies, including robbery and malicious wounding. His name was Sidney Cutchin (and he gave me permission to share his story).

I went to the local jail to interview Sidney—"this person God had brought into my life." Sidney and his brother Harry had robbed a service station and they had gotten into a fight with a young man and badly beaten him. The police had obtained written confessions from both Sidney and Harry. In common parlance, the police "had the goods" on Sidney. I realized that all I could do was explore Sidney's background to see if there was something that might lead the judge to temper justice with mercy at sentencing.

Sidney's mother had died when he was fourteen, and his father did the best he could, raising six boys and two girls in a rough Charlottesville neighborhood. Under different circumstances, I recognized that I might have been in Sidney's shoes. When he was younger, he was the good boy in the family. He was raised in the church, gave his life to Christ at an early age, and sang in the youth choir, but he drifted away from Christ. At the end of our first meeting in the jail, I offered to pray with Sidney. He agreed. I prayed for Sidney and for Sidney's case and that God would be with both of us through the ordeal ahead. Sidney seemed surprised that I offered to pray with him. He said the jail's nurse had prayed with him as well. Sidney thought God was trying to get his attention (and I suspect he was). In the course of representing Sidney, we became friends.

A few months later, Sidney pled guilty to the charges. At his sentencing hearing, a large crowd of lawyers and other people were waiting for their cases to be heard. In my argument, I highlighted the bits of Sidney's history that suggested the possibility of his reform. I became a bit emotional and teared up. In the end, the judge gave Sidney a stiff prison sentence—eighteen years with six years suspended.

Following the hearing, the police led Sidney out the courthouse's back door, and I walked out the front. As I left, a local prosecutor saw

that I was troubled and pulled me aside. I'm sure he had my best interests in mind. He said, "Bob, I saw your argument in there. Let me give you a little advice. Don't get emotionally attached to your clients. The Cutchin boys are scum, and they are not worth it."

I was stunned. I did not know what to say. Had I been quicker on my feet, I would have passed on a message from the story of creation that I learned in Sunday school as a young child, a message that has profound implications for those who practice law.

Clients and dignity. I occasionally teach a trial practice course. Much of what I teach are old trial lawyer techniques, developed by lawyers over many decades and passed from lawyer to lawyer. One trial lawyer's rule is that if you want a jury to remember something, tell them three times: tell them in the opening statement, tell them through the evidence, and tell them in the closing argument.

The author of Genesis uses a similar technique in the creation story. He must want us to remember something. Three times in two verses, the creation account highlights that God created humans in his image:

Then God said, "*Let us make human beings in our image, to be like us. They will reign over the fish in the sea, the birds in the sky, the livestock, all the wild animals on the earth, and the small animals that scurry along the ground.*"

So God created human beings *in his own image*.

In the image of God he created them;

male and female he created them. (Gen 1:26-27, emphasis mine)

Over Christian history, Christians have drawn three (at least) significant implications from the fact that God created humans in his image: (1) humans have Godlike dignity, (2) humans have Godlike responsibilities, and (3) humans have Godlike abilities. The next chapter will explore the last two concepts and their implications for clients and lawyers. But first, a consideration of clients and their Godlike dignity. Humans are not a chance collocation of atoms. They

are not “human resources” to be used for our purposes. They are not “scum.” They are precious.

The notion of human dignity as an aspect of God’s image made its way into the *United States Reports*—the official reports of the opinions of the US Supreme Court. Associate Justice John McLean grounded his dissent in the infamous *Dred Scott* case (in which the majority held that enslaved persons are property) in the *imago Dei*: “A slave is not a mere chattel. He bears the impress of his Maker, and . . . he is destined to an endless existence.”⁶ Four years later, the United States was at war over this principle.

C. S. Lewis develops the implications of the notion of human dignity:

It is a serious thing to live in a society of possible gods and goddesses, to remember that the dullest and most uninteresting person you can talk to may one day be a creature which, if you saw it now, you would be strongly tempted to worship, or else a horror and a corruption such as you now meet, if at all, only in a nightmare. All day long we are, in some degree, helping each other to one or other of these destinations. It is in the light of these overwhelming possibilities, it is with the awe and the circumspection proper to them, that we should conduct all our dealings with one another, all friendships, all loves, all play, all politics. There are no *ordinary* people. You have never talked to a mere mortal. Nations, cultures, arts, civilisations—these are mortal, and their life is to ours as the life of a gnat. But it is immortals whom we joke with, work with, marry, snub, and exploit [and counsel in our offices and represent in court]—immortal horrors or everlasting splendours.⁷

Respecting clients. Lewis makes two points that are important for us as we consider human dignity and lawyer relations with clients. First, there are no ordinary clients. We should treat clients with respect—the lowliest criminal defendant and the most arrogant CEO were both created in God’s image and will have an

⁶J. McLean, dissenting in *Dred Scott v. Sandford*, 60 US 393, at 550 (1856).

⁷C. S. Lewis, *The Weight of Glory*, rev. ed. (New York: HarperOne, 2015).

endless existence. My client is not only “this person God has brought into my life,” but also this person God created in his image and this person who will live forever. It is an honor to serve such people.

Merely serving as someone’s lawyer can be a means of showing respect to him or her. Everyone deserves to have someone tell his or her story. I represented Sidney because my law firm signed onto the court-appointment list for indigent defendants. There may not be such a list where you practice, but other opportunities exist. Legal aid offices (including many Christian legal aid offices) long for volunteer attorneys. And informal “legal aid” clients appear at the door of almost every law firm. A nonpaying, indigent client may be “this person God has brought into my life.”

Treating a disadvantaged client with dignity may be a matter of showing the client respect when no one else is going to do so. I addressed clients as equals—if they called me “Mr. Cochran,” I used a similar title for them. I am sure some clients initially saw me as one more authority figure who would tell them what to do. They may have wanted me to do so. I resisted the authority-figure ego boost and encouraged them to make the decisions that would primarily affect their lives, not mine. Part of a client’s dignity is having the opportunity to take responsibility, to make decisions.

Part of treating clients with respect is listening to them. As we saw in the case of Ivan Ilyich, his doctor ignored what he had to say, much as Ilyich had ignored what his clients had to say. Listening to a client is a matter of respect, but it is also an essential part of developing an accurate analysis of a case. One of the dangers of being a lawyer is that you jump to conclusions too quickly. You identify what seem like the relevant facts and hastily develop your theory of the case. Professionals of all sorts tend to analyze cases before they hear a client out. If professionals listen, they can learn from their clients. My favorite example of a professional failure to listen comes again from the medical field.

Dr. Carole Horn was a psychiatrist at St. Elizabeth’s, a psychiatric hospital in Washington, DC. She says, “I whisper silent thanks to the old man at St. Elizabeth’s who convinced me of the importance of asking people what they think is causing their symptoms.” Another doctor diagnosed the old man as paranoid schizophrenic because he wore three pairs of glasses. Fortunately, Dr. Horn asked the old man about the glasses. He said, “Oh, these . . . you know my eyesight ain’t what it used to be, and I don’t have no good glasses. I found all these and put ‘em together, and now I see just fine.”⁸ At times, professionals need to look at the world through their clients’ eyes—and maybe through their clients’ three pairs of glasses. In biblical terms, professionals need to “Be quick to listen [and] slow to speak” (Jas 1:19). Part of recognizing God’s image in clients is listening to them.

Challenge
Hearing clients

One thing I noticed in law practice was how *alone* many clients are during legal representation. They are going bankrupt, they have been abused, the state has taken away their children, they have been abandoned by a spouse, they have been injured and are immobile, they have lost a job, they have been accused of a crime or a tort. Often, the reaction, even of their loved ones, is to withdraw. As when a family member dies, friends don’t know what to say, so they avoid the bereaved when they most need fellowship. Sometimes, the isolation is self-inflicted. Clients are often ashamed of the underlying problems that generate legal problems and avoid reaching out for the fellowship they need.

A friend from my church worked for an investment company and he came to me for advice. He had been “borrowing” client investment funds and using them to speculate on his own high-yield, short term, “sure bets.” One turned out to be a bad bet. My friend lost millions in client funds and was charged with embezzlement.

⁸Thomas L. Shaffer, *Faith and the Professions* (Provo, UT: Brigham Young University, 1987), 56 (quoting Carole Horn, “A Doctor in the House,” *Washington Post*, October 28, 1984, C1).

I asked how his wife was handling all of this. He responded, “Oh, she doesn’t know.” Eventually, he did tell her. He was convicted and went to prison, and she waited for him. But for a while, I was the only one to whom my friend thought he could talk. A lawyer may (for a time at least) be the only one who knows a client’s deepest and darkest secrets. Merely being with a client and sharing his or her life is a means of showing respect to this person God created in his image. In doing so, we imitate God, who walked and talked with Adam and Eve in the garden.

Criminal defendants in particular are often alone in the world. At times, their families and friends have abandoned them. I tried to show my criminal defendant clients (including Sidney) a bit of respect by standing with them when they were called on to plea or to be sentenced. That symbolized the situation of many criminal defendants. They are alone, except for their defense lawyer. Criminal defense lawyers, in Joseph Allegretti’s terms, are often, like Jesus, “a companion of the guilty.”⁹

Challenging clients. A second lesson from C. S. Lewis is that people affect one another. They move each other in good and bad directions. This principle applies, maybe especially, in legal representation, where lawyers and clients often take actions that call on their deepest values. Tom Shaffer said, “The goal and purpose of a virtuous life in a profession is to help others become good persons.”¹⁰ Hopefully, legal representation will move both us and our clients in a godly direction.

Some legal commentators equate dignity with autonomy,¹¹ and argue that the lawyer’s primary goal is to increase the autonomy of the client. But I think autonomy suggests an isolation that is in

⁹Joseph G. Allegretti, *The Lawyer’s Calling: Christian Faith and Legal Practice* (New York: Paulist Press, 1996), 74-76.

¹⁰Shaffer and Shaffer, *American Lawyers*, 94.

¹¹See Monroe H. Freedman and Abbe Smith, *Understanding Lawyers’ Ethics*, 3rd ed. (Newark, NJ: Matthew Bender, 2004), 57. See also the discussion of autonomy and client counseling in chapter five.

tension with the notion of dignity. In some situations, respecting a client will be a matter of deferring to client choices, but in other situations, respect will be a matter of challenging the client when the lawyer sees the client going down a wrong road. Dignity includes agency, but not merely the freedom to do what one wants. Lawyers should help clients take responsibility for their lives within their families, relationships, businesses, and communities.

The client and the lawyer are not the only people who are likely to be affected by legal representation. One of the biggest challenges of law practice is that the opposing client, the opposing lawyer, the client's family, and the client's employees also bear "the impress of their maker." If we are to help clients become good persons, we may need to encourage clients to treat these other people with dignity. Chapter five, on lawyers as counselors, will consider the ways lawyers might respect the dignity of both clients and other people during legal representation.

Challenge
Knowing when
to empower
clients and
when to
challenge them

LOVING CLIENTS

Following my argument in Sidney's case, my prosecutor friend encouraged me not to become emotionally involved with clients. Some, he said, "are scum and they are not worth it." Such emotional distance from clients is not uncommon among lawyers. As one lawyer put it, "I'm going to do a good job if I think you're an asshole, if I think you're a nice guy. I try and be as professional as possible and I try to have a thick skin."¹² This lawyer seems to view such distance as an aspect of professionalism. Maybe he feels it protects him from responsibility for things he does for clients. Perhaps it is his way of coping with unlikable clients.

¹²Rand Jack and Dana Crowley Jack, *Moral Vision and Professional Decisions: The Changing Values of Women and Men Lawyers* (Cambridge, MA: Cambridge University Press, 1989), 104-5.

Challenge

What does love look like in a professional relationship?

I encourage lawyers to love their clients; none of them are “scum”; all of them are “worth it”; none of them are “assholes.” The biblical message is that all humans should be treasured. Both the Mosaic law and Jesus teach that we are to love our neighbor as ourselves (Mt 22:39, Jesus quoting Lev 19:18).

Jesus loved those at the bottom of the social scale: sinners and prostitutes. He loved those who had power and money: Roman officers and tax collectors. He loved the rich young man who was unwilling to give up his wealth (Mk 10:21).

The love Jesus taught and modeled was unlike other forms of love. Christ’s love—*agapē*—is “other-regarding care,”¹³ “unclaiming love.”¹⁴ C. S. Lewis notes that other forms of love—romantic love, sexual love, and friendship—are “always directed to objects which the lover finds in some way intrinsically loveable.” By contrast, *agapē* enables one “to love what is not naturally lovable—lepers, criminals, enemies, morons, the sulky, the superior and the sneering.”¹⁵

Whether your clients are criminal defendants on death row or CEOs of large corporations, one of the great honors of being a lawyer is to help them with their lives and work. Before they enter your office, pray that God will show you how to love them that day.

Lawyers should love their clients, but I offer three qualifications.

Tough love. Jesus calls us to show agapic love to our neighbor. This is not sentimental or romantic love. As Jeffrie Murphy notes, it is not cuddly.¹⁶ It is a desire for the good of the other. The good of the client should always be the standard before the lawyer and some situations require “tough love.” Agapic love seeks the best for people and is not

¹³Gene H. Outka, *Agape: An Ethical Analysis* (New Haven, CT: Yale University Press, 1972), 1.

¹⁴Paul Ramsey, *Basic Christian Ethics* (Louisville: Westminster John Knox, 1993), 71.

¹⁵C. S. Lewis, *The Four Loves* (New York: Harcourt, Brace, 1960), 177.

¹⁶Jeffrie G. Murphy, “Christian Love and Criminal Punishment,” in *Christianity and Law: An Introduction*, ed. John Witte and Frank S. Alexander (New York: Cambridge University Press, 2008), 223.

simply concerned with making their lives more pleasant. In legal representation, it may include calling clients to follow the “better angels” of their nature.

Give dispassionate advice. Second, a lawyer’s love for clients should not interfere with the lawyer’s ability to give clients clear-sighted advice. Indeed, love should motivate lawyers to give such advice. Lawyers need to step back from the emotions of a case, identify the client’s options, and help the client weigh the pros and cons of each. A lawyer’s love for a client should help the lawyer see what is best for the client, and not cloud the lawyer’s understanding of the case. A lawyer may need to tell parents that their beloved child should face the legal consequences of his or her actions. A lawyer may need to suggest that bringing suit, even when justice is on the client’s side, is not worth it and might destroy the client.

Anthony Kronman’s term, “sympathetic detachment” (which he compares to a friend’s love), captures the best stance for the lawyer. The lawyer is sympathetic—he or she is on the client’s side. Yet the lawyer is detached—he or she can step back and bring objectivity to the lawyer and the client’s assessment of the case.¹⁷

Protect yourself. My third qualification is that lawyers, like other people in helping professions, need to be careful about burnout. Legal representation is often difficult emotionally, and lawyers can implode if they take on too much. Demanding clients, high-pressure cases, contentious negotiations, and intense court hearings can leave lawyers emotionally spent, with few resources for themselves, their families, and other clients. Client situations—personal injury, risk of imprisonment or capital punishment, family breakup, liability, bankruptcy—generate stress for lawyer and client. Suicide, divorce,

Challenge

Loving **and**
challenging
clients

¹⁷Anthony T. Kronman, *The Lost Lawyer: Failing Ideals of the Legal Profession* (Cambridge, MA: Belknap Press of Harvard University Press, 1993), 133. For further analysis of Kronman’s argument, see chapter five.

alcoholism, depression, and anxiety are among the lawyer’s occupational hazards. Lawyers, like teachers, counselors, social workers, and other people in helping professions, can become cold and numb and unable to provide the care and service that drew them into their profession to begin with.¹⁸

Even Jesus was burdened by the demands of people who needed healing and teaching. A moving example occurred shortly after King Herod murdered Jesus’ cousin John the Baptist. “Then Jesus said, ‘Let’s go off by ourselves to a quiet place and rest awhile’” (Mk 6:31). They set off in a boat, but a large crowd chased them around the lake. Jesus “had compassion on them” (“his heart broke” according to *The Message*) “because they were like sheep without a shepherd. So he began teaching them many things” (Mk 6:31).

This story of Jesus and the crowd illustrates the dilemma compassionate people often face. Even Jesus needed times of refreshing, times alone with his Father, and times with his friends, but at times Jesus pressed forward and responded to the needs of the people who came to him for help. Jesus’ life and practice affirm the high value of both times of renewal and care for people. There is not a calendar

Challenge

**Caring for
emotionally
draining clients
in an emotionally
draining profession**

app for determining the balance one should strike. One must recognize the high value of both caring for others and caring for oneself. We are to love our neighbor *as we love ourselves*.

Among the competing demands, I think the first priority should be time with our heavenly Father. That appears to have been

¹⁸For a discussion of Christian disciplines that will help the Christian address burnout and the other emotional challenges that accompany law practice, see the end of chapter seven. For a helpful discussion of compassion fatigue, see Christie Spowls, “Compassion Fatigue and Attorneys: What Is Your Self-Care Plan?,” *Texas Bar Journal* 7, no. 8 (September 2010): 656. (Her first three suggestions are: “Start your day with quiet time”; “Replenish yourself daily”—eating healthy, sleep seven to nine hours, and get regular exercise; and “Connect with someone daily”—family, close friends, and daily debriefing of your cases with someone in your office.)

Jesus’ practice. Even when people were making the greatest demands on his time, he rose before sunrise to pray (Mk 1:35). As the airline steward tells us at the beginning of every flight, if we are traveling with those who need our care and an emergency arises, we should first put on our oxygen masks and then tend to their needs. God is our source of oxygen and should be our first priority.

In addition, just as clients need our “sympathetic detachment,” we need the sympathetic detachment of friends and counselors. (Ironically, as I was writing the last sentence, I received a text from a former student who needed to talk about his challenges with burnout.) Seek out a Christian fellowship group—ideally, a lawyers’ group that will understand what you face—and keep tabs on one another. Don’t hesitate to see a mental health professional.

One final bit of advice comes from a friend (of a friend) who has cheerfully led his very large church’s pastoral care ministry for many years. People wonder how he can continue without buckling under the emotional burden of his church members’ heartbreaking problems. He says cheerfully, “I learned long ago that I am not the burden-bearer. I take the burdens to the Lord, and I leave them with him.” For further discussion of Christian responses to the emotional pressures faced by attorneys, see the end of chapter seven.

A visit with Sidney at Camp 10. You will recall Sidney Cutchin, my criminal defense client who was the subject of the story at the beginning of this chapter. When Sidney and I parted after his sentencing, I assumed that would be the last time I would see him. I suspect he did as well. But a few years later, I was driving across Virginia to Tennessee, near the prison where he was incarcerated, and I decided to drop by for a visit. Sidney was at “Camp 10.” (Prisoners are often known by their number, e.g., “Prisoner 24601”; in this case, even the name of Sidney’s residence was dehumanizing.) When the guards told me it was not Camp 10’s visitation day, I persisted: “I am Sidney’s lawyer.” Actually, I was not sure I was still Sidney’s lawyer. His case had ended a few years earlier, but on the other hand, I had

never quit, and he had never fired me. The guard looked at me skeptically, in my jeans and knit shirt, but I had a state bar card and a smile, and he let me in.

Sidney was surprised to see me. He did not get many visitors. When I told him that I just dropped by to see how he was doing, his face lit up. The visit yielded no dramatic results. Sidney told me a bit about life as an inmate at Camp 10. I told him about life as a young lawyer. But this was a little way for me to honor Sidney's humanity and God's image in him. Sidney gave me the opportunity to visit Christ in prison, as in Jesus' parable of the sheep and goats, where at the final judgment, Jesus says to his followers, "I was in prison, and you visited me" (Mt 25:36). His followers reply, "When did we ever see you . . . in prison and visit you?" (Mt 25:39). Jesus responds, "I tell you the truth, when you did it to one of the least of these my brothers and sisters, you were doing it to me!" (Mt 25:40). Sometimes, loving a client can be a matter of staying in touch when no one else is likely to do so.

What happened to Sidney? We lost touch, but I tracked him down twenty-five years later. If you are the sort of person who likes to read the conclusion of a story first, you can look at the end of this book. If not, read on.

CHOOSING CLIENTS

As I have argued in this chapter, lawyers should respect and love clients as people God created in his image. But what about other people who might be harmed as a result of representation? God created them in his image as well. The second great commandment is "Love your neighbor as yourself." A troubled lawyer, seeking to justify himself, might ask Jesus, "Is the opposing party my neighbor?" (cf. Lk 10:29). What is a lawyer to do when a client wants something that is legal, but morally troubling? A lawyer might engage the client in moral discourse concerning proposed action. We will discuss that

possibility in chapter five. The other possibility is that a lawyer might choose not to represent the client.

Some lawyers refuse to take on certain types of cases. A few examples: lawyers might refuse to engage in criminal prosecution, criminal defense, divorce practice, sexual harassment defense, corporate practice, or suits against Christians. Some lawyers refuse to represent clients who have a reputation for doing illegal or immoral things. In this section, we will explore several approaches Christians have taken to morally troubling cases.

Challenge

What cases to accept; what cases to reject

Refuse to pursue injustice. Some lawyers refuse to take cases they believe to be unjust. Louis Brandeis was one of them.¹⁹ Prior to his appointment to the Supreme Court, Brandeis practiced law for many years and his arrangements with clients came to light during his Senate confirmation hearings. A banker testified that before taking the bank on as a client, Brandeis required that he “be satisfied of the justness of our position.”²⁰ Austen Fox, a former American Bar Association (ABA) president, testified that “the trouble with Mr. Brandeis is that he never loses his judicial attitude toward his clients. He always acts the part of a judge toward his clients instead of being his clients’ lawyer, which is against the practices of the Bar.”²¹

John Paul II suggests that lawyers apply a justice standard to the cases they take. His discussion of lawyers and divorce is an interesting example. Catholic teaching allows lawyers to assist a client in obtaining a divorce in very limited circumstances.²² John Paul II highlights the value of permanent marriage “for spouses, for children, for the Church

¹⁹See Robert F. Cochran, “Louis D. Brandeis and the Lawyer Advocacy System,” *Pepperdine Law Review* 40 (2013): 351-64.

²⁰James Willard Hurst, *The Growth of American Law: The Law Makers* (United States: Lawbook Exchange, 2001), 371. For further discussion of Brandeis and his law practice, see Thomas L. Shaffer, *American Legal Ethics* (New York: M. Bender, 1985), 241-308.

²¹Quoted *infra*.

²²See John J. Coughlin, “Divorce and the Catholic Lawyer,” *Jurist* 61 (2001): 290-310, https://scholarship.law.nd.edu/law_faculty_scholarship/825.

and for the whole of humanity.” He notes that permanent marriage is “at the root of all society” and that divorce “has devastating consequences that spread through the social body like a plague.” He argues for “indissoluble marriage for nonbelievers, as well as believers.” Rather than offer divorce, lawyers should encourage couples to reconcile.

The pope challenges the notion (sometimes adopted with pride by lawyers) of the lawyer as a hired gun: Lawyers should “avoid becoming mere technicians at the service of any interest whatever.” He suggests an important and challenging standard: Lawyers “should always decline the use of the profession for an end that is contrary to justice.”²³

Law practice as an opportunity for ministry. My friend and self-styled “country lawyer” John Acuff, who practiced law for many years in Cookeville, Tennessee, held a more flexible view on divorce practice. In general, he opposed divorce, but he would handle divorce cases in order to have the opportunity to care for clients and to encourage reconciliation. John’s view was that the law was going to do what it was going to do, but that law practice—particularly family practice—gave him an opportunity for ministry.

Legal cases are often the worst experiences in a client’s life. Divorce clients are often particularly vulnerable and in need of a friend, as well as the love of Jesus. Often, family and friends have abandoned divorce clients, and they suffer from conflict, fear, and stress. Some divorce clients are without a home, sometimes having escaped an abusive spouse. John and his wife Carolyn would open their home to clients. John enjoyed telling about the surprise of a member of his church when he was greeted at the door of John and Carolyn’s home by an unfamiliar woman in her bathrobe. She identified herself as “one of John’s divorce clients.”

²³John Paul II, transcript of Address to the Prelate Auditors, Officials and Advocates of the Tribunal of the Roman Rota, January 28, 2002, www.vatican.va/content/john-paul-ii/en/speeches/2002/january/documents/hf_jp-ii_spe_20020128_roman-rot.html, at 9 (citing Catechism of the Catholic Church, n. 2383).

John would encourage clients to work toward reconciliation with their spouses and he told stories of marriages he had helped to save. In a day when some parties to troubled marriages go to a lawyer before they go to a pastor or counselor, a caring lawyer can encourage counseling and renewal of marriages that otherwise would be lost.

John Acuff gives us a second standard: accept cases where you have an opportunity for ministry.

Law practice as an opportunity for influence. In the late 1970s, Tom Skinner was a popular Christian speaker. His book *Black and Free* chronicled his conversion to Christ out of a Harlem gang. He was a big, powerful man and was influential with inner-city gang members, professional athletes, business leaders, and national politicians of both parties. I recall hearing him speak to a meeting of prominent political and business leaders. He was the first person I heard suggest that in the Lord's Prayer, the phrases "Thy kingdom come" and "Thy will be done in earth, as it is in heaven" (Mt 6:10 KJV) are parallel to one another—that to the extent God's will is done on earth, his kingdom has come. At the end of Tom's sermon, many streamed to the front to commit themselves to follow Christ more deeply. I suspect many of them had never heard preaching like Tom's or seen an altar call. Tom and some of his friends concluded the meeting with a powerful gospel version of "Jesus Loves Me."

Tom used to mentor young lawyers and law students in New York City. My friend Rich Dean, a young law firm associate at the time, recalls having fish and chips with Tom and a group of lawyers one evening. The conversation turned to the Ford Pinto cases, cases that had received a lot of publicity at the time. Around the country, numerous Pintos had burst into flames when hit from the rear. Internal Ford memos emerged, revealing that Ford, with a single-minded focus on cost-savings and profits, had forgone safety innovations that would have saved many lives. Rich confidently asserted that he would never represent Ford Motor Company. After a thoughtful pause, Tom Skinner asked: "Would it be any different if you were in the boardroom?"

That gave Rich and the young associates something to think about.

The story of this exchange reminds me that someone once asked Christian writer and philosopher Dallas Willard, “How do you get Christianity into the boardroom?” He responded, “Have a Christian walk in and take a seat.”²⁴

One of the challenging things about both Tom Skinner’s question and Dallas Willard’s statement is that it is not clear that a Christian in the boardroom would make a difference. Rich expressed admirable conviction as a young associate, but would he have the courage to raise difficult questions in the boardroom, with the pressures placed on a young (or an older) lawyer? And would other people in the boardroom respond to challenges raised by a lawyer? I think Christians can assume that God has us where he wants us. God has called us to be faithful to him, whatever the risks, and to leave the results to him.

Tom Skinner’s encounter with Rich was providential. Rich went on to represent major corporate clients around the world. He was the first American lawyer to have an office in Moscow. As the only game in town, he represented more Fortune 500 firms at that time than any other lawyer in the world, and he became a leading expert in the Foreign Corrupt Practices Act. He was able to raise tough questions, even in his early years of practice, with his law firm and with clients.²⁵ As for the Ford Pinto cases, I suspect that, in retrospect, Ford officials wish they had had a Rich Dean in the boardroom.

Tom Skinner’s question implies a third standard for lawyers: accept cases where you might make a difference.

Encouraging obedience to law. In chapter five, I will discuss ways lawyers might raise and discuss difficult moral questions with clients—the sort of questions Rich might have raised with Ford Motor Company. But in some cases, it may be clear that clients are not interested in moral discourse. They may want to get away with as much as they can

²⁴Dallas Willard, *Called to Business: God’s Way of Loving People Through Business and the Professions* (Dallas Willard Ministries, 2018), 17.

²⁵Rich Dean, “Reframe: Israel’s Calling,” *Regent College Reframe Episode 4*, 2:22, accessed September 5, 2022, www.reframecourse.com/episodes/episode-4.

under the law. They may just want a lawyer to keep them out of trouble. Even in these cases, there are arguments for representation.

We might compare the work of such lawyers to that of a prosecutor. One of a prosecutor’s greatest contributions to the public good is that the threat of prosecution may lead people to comply with the law. Almost all lawyers serve a similar function during client counseling. Advising clients is not as dramatic as prosecuting criminals, but it also leads people to comply with the law. Lawyers inform clients about the law and about how it might apply to them. Those clients are likely to comply with the law, even if only to avoid negative consequences. Lawyers do an important public service by informing clients—even the worst of clients—of the limits law imposes on them.

Refusing to be a party to evil. Obviously, the arguments above pull in different directions. Some suggest that lawyers should avoid cases where they might assist injustice. Others suggest that lawyers should take even questionable cases if they think they will be able to care for people, exercise a good influence, or uphold the rule of law. I respect people who hold each of these views. Lawyers should wrestle with and pray about what clients and cases to take.

I do believe, however, that lawyers should refuse to do something they believe to be morally wrong. In such cases, the most faithful thing lawyers can do *for their clients* is to be faithful to God. Of course, if a lawyer refuses to take a course of action, the client can obtain another lawyer, but the lawyer’s faithfulness to God may influence the client in a good direction. I believe a lawyer should refuse to do wrong, even if ordered to do so by a judge or other government official. The most dramatic example of such refusal was probably the refusal of Thomas More, at the cost of his life, to support his longtime client and friend King Henry VIII in Henry’s divorce from Catherine of Aragon. Immediately prior to his execution, More said, “I die the king’s faithful servant, and God’s first.”²⁶

²⁶From the *Paris Newsletter* account, August 4, 1535, <https://thomasmorestudies.org/quotes/>.

Note that I am not suggesting that a lawyer refuse or withdraw from a case merely because the lawyer would make a different choice than the client. Moral issues in legal representation are often difficult issues and thoughtful people can differ over what they should do. If the lawyer believes reasonable people could differ over what they should do, I believe the lawyer can rightly represent the client. The lawyer's role in speaking for the client is an important means of client and public service. It empowers the client and helps judges and juries determine a proper result. But lawyers should not be a party to evil.

Doing "God's work in the world." The choice of what cases to *refuse* is an important one, but a much more common choice is likely to be what cases a lawyer will *accept*. In general, I think lawyers should work on projects in which they believe. A lawyer's practice should bring glory to God. As I will argue in the coming chapters, I believe such work includes the broad range of work lawyers do. Law professors Charles DiSalvo and William Droel helpfully describe the sorts of lawyers who "do God's work in the world":

They make regular and frequent judgments about the content of their practice, based on their belief in the holiness of ordinary work. Such lawyers see everyday responsibilities not as weights dragging them down, but as opportunities to do God's work in the world. These lawyers believe that almost any job can make a contribution to the kingdom of God. For example, a bond counsel must decide whether the projects being underwritten are worthy of respect and, therefore, his or her talent and efforts. Does this water treatment facility, housing project or road contribute to the well-being of humanity and thus to the kingdom of God? Or is it a project that is nothing but a political boondoggle, with no practical justification, from which the lawyer would be better to walk away?²⁷

I encourage lawyers to make these sorts of judgments.

²⁷Charles R. DiSalvo and William L. Droel, "Reflections on the Contents of the Lawyer's Work—Three Models of Spirituality—and Our Struggle with Them," *Texas Tech Law Review* 27 (1996): 1069-80, at 1076. Reprinted in Thomas E. Baker and Timothy W. Floyd, eds., *Can a Good Christian Be a Good Lawyer?: Homilies, Witnesses, and Reflections* (South Bend, IN: University of Notre Dame Press, 1998), 127-38, at 133.



Once a lawyer has agreed to represent a client, the lawyer should recognize the client as a gift from God. The client is “this person God has brought into my life.” The client bears God’s image. But is there value to the work lawyers do for clients? Can everyday law practice be a Christian calling? In professors DiSalvo and Droel’s terms, is there holiness in ordinary work, and are everyday responsibilities “opportunities to do God’s work in the world”? In the following four chapters we consider those questions as they relate to the ordinary, everyday tasks of lawyers.

REFLECTION QUESTIONS

1. Have you ever been treated poorly by a lawyer, doctor, professor, or other professional? What lessons can lawyers learn from that experience?
2. What difference would it make in a lawyer’s relationship with clients if the lawyer viewed each client as “this person God has brought into my life” or as this person God created in his image?
3. What challenges arise if lawyers view opposing parties, opposing lawyers, and other persons affected by their representation as persons created in God’s image?
4. What do you think the lawyer quoted in this section meant when he said, “I’m going to do a good job if I think you’re an asshole, if I think you’re a nice guy. I try and be as professional as possible and I try to have a thick skin”?
5. What are the dangers of being emotionally attached to clients? What steps should lawyers take to protect themselves from those dangers? What steps should lawyers take to protect themselves from growing emotionally distant from clients?
6. What sorts of clients would you reject and why? The KKK—if your city unconstitutionally denied them a parade permit? Terrorists who allegedly blew up an apartment building, killing many? Ford Motor Company? Harvey Weinstein?

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