

Career Path: How to Spot a Bad Lawyer

Career Development



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The comedians among the public are itching to say something like: “Did they graduate from a law school?” Or: “Are they admitted to practice law?” Lawyer jokes are rampant because lawyers, sadly, live up to and exceed the public’s worst expectations of us.

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I'm thinking beyond sleazy personal injury lawyers and slithery prosecutors. Today, I want to explore with you how we really feel about one of the hardest legal duties: staying objective in difficult circumstances and upholding the rule of law.

The right to defense

We learn in school about the rule of law and how preserving it is vital to maintaining a democratic society. We tell ourselves we operate in nations of laws, not nations of individuals, where laws apply equally to all. So what is a lawyer to do when the facts point one way and the law another, when our potential client is truly odious, or when our personal beliefs go against what the law dictates? The answer is clear, at least for a law student, but in practice, lawyers' behavior is anything but.

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Let's take a few examples to illustrate.

- Let's say you work for a famous civil rights organization, dedicated to defending free speech. Does it matter whether you only take cases from people whose speech you agree with? In the era of Trump-inspired lies, what if you refused to defend someone's right to free speech specifically because you disagreed with their viewpoints? Well you wouldn't be much of a defender of free speech, would you? That's precisely the position the ACLU finds itself in today.
- Harvey Weinstein, a deeply unsympathetic person. Accused of forcing himself on a string of vulnerable women, he is what comes to mind under the definition "odious client." But does a client's unpopularity justify refusing him a defense? In today's charged atmosphere, many otherwise serious people think it does. Harvard University law professor Ronald Sullivan came under intense criticism for agreeing to serve on Weinstein's defense team, with Harvard firing him as faculty dean of an undergraduate house. (Sullivan ultimately withdrew from the defense team.)

One commentator at the time wrote, "The reason we think of civil rights lawyers as doing 'good work' is because they chose just causes." (Nathan J. Robinson, Lawyers are Responsible for their Choice of Clients) Nothing could be more wrong. In its heyday, the ACLU defended the KKK and was proud to defend pornographers. The good work is defending the rule of law, not whatever cause happens to have majority approval at that moment in time.

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- Now imagine you are a judge. If plaintiffs' and defendants' lawyers get carried away at times, we can chalk it up to our desire to be zealous advocates for our clients. The judge has no such excuse or expectation. Among all lawyers, we expect judges to be the most impartial, literally and figuratively above it all. At its most fundamental level, our courts determine the very content of our laws.

The right to fairness

What then would you say about a judge who decides a case because she identifies with one side more than the other, or has strong personal feelings about the morality and not legality of conduct? What would you say about a judge who can be counted to vote in line with their racial or gender preferences, or their political affiliation, no matter the law?

These are all easy questions. The lawyer who defends only free speech for those he agrees with? The lawyer who refuses any objectionable clients? The judge who decides cases by personal feeling and party affiliation? Bad lawyers all. Bad because they undermine the rule of law for nothing more than fickle emotion and public sentiment.

I had these thoughts when seeing the uproar over the leaked US Supreme Court draft opinion overturning *Roe vs. Wade*. By the way, the leaker themselves: bad lawyer, for the same reason that they undermine the rule of law. Is the benefit of putting pressure on a Supreme Court justice in any case worth undermining the legitimacy of the entire court?

Applying the law equally

And what does it say about the rule of law that we think it matters who nominates our Supreme Court justices or what their political affiliation might be? Or that their skin color, or gender, or ethnic background, is even part of the discussion?

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> it is meaningless.

Bad lawyers these days are sadly easy to spot. Let’s make an effort not to join their ranks. The way to do this is to remember the rule of law must benefit everyone equally or it is meaningless. And the time for us to be especially wary when we feel most strongly about a cause.

Be well.

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