Land & Water Law Review

Volume 34 | Issue 1 Article 6

1999

Defining a Theory of Lawyer Ethics

C.M. Steve Aron

University of Wyoming
College of Law

LAND AND WATER LAW REVIEW

VOLUME XXXIV 1999 NUMBER 1

DEFINING A THEORY OF LAWYER ETHICS

*C.M. Steve Aron**

It seems, as one becomes older,
That the past has another pattern, and ceases to be a mere sequence—
Or even development: the latter a partial fallacy
Encouraged by superficial notions of evolution,
Which becomes, in the popular mind, a means of disowning the past.†

Modern problems of ethics need not give cause for despair. Many attorneys see the practice of law reeling ethically out of control, because events so often go beyond traditional experience. Such excessive reactions usually say more about the observers than they do about the profession. To the inflexible, hidebound lawyers in pinstripes, any unprecedented situation gives the impression that the center is not holding, but that impression can be mistaken. Signs of impending disaster are sometimes only indicators of change. In every aspect of human endeavor, unsettling events on the leading edge have always been seen as threats to established institutions. With a slight alteration in attitude, those same events can instead be viewed as positive developments—they might even be seen as indicators of progress,

* C.M. Aron is a partner in the law firm of Aron and Hening, Laramie, Wyoming, and authored *Defining the Ultimate Lawyer*, 30 Land & Water L. Rev. 515 (1995). B.S. 1965, United States Military Academy, West Point; J.D. 1975, University of Wyoming. The author extends appreciation for the encouragement and comments of three attorneys genuinely concerned about the ethics of legal practice: former associate, K. Karla Tull; Drake D. Hill of Cheyenne, Wyoming; and Asher N. Tilchin of Farmington Hills, Michigan.

† T.S. ELIOT, FOUR QUARTETS: THE DRY SALVAGES 39 (1943).

opening toward new understandings and new ways to welcome the future.

To the traditional bar, with its hallowed customs of privacy and aloofness, the greatest shocks occur when astonishing images emerge from the popular media. Seen from the entrenched battlements of an old profession, media-lawyer tales look like reports coming through a space-time warp from some parallel lawyer universe, part of another profession altogether. Strange and confusing lawyer actions appear regularly in the electronic and print media. Huckster advertising is common. Lawyers advertise themselves like car salesmen, claiming the inspiration of animal spirits like they were the newest models of V-8 engine: bulldogs, bears, tigers. Female lawyers have even advertised their legal services with provocative photographs of themselves. On another front, media techniques reduce trials to exercises in public relations, whether by solicitation of clients and class-action plaintiffs or by blatant efforts to pre-condition entire populations of potential jurors. This is all too much for an old-time lawyer to endure.

Perhaps there is a good reason so many novel ethical issues—media lawyering and others—lead to confusion and contradiction, seeming to foretell some lawyer apocalypse. The problem might simply be that no accepted baseline or foundation exists for what is acceptable lawyer conduct. Thus, unless each new and startling action falls within a specific ethical prohibition, there is no method for dealing with it. These modern problems suggest a lack of order in what should be an orderly realm. The disorder surely could not be the result of complexity, because each modern ethical issue, taken alone, is notably simple. That is, for each problem, no matter how convoluted the facts giving rise to it, the answer to the ethical question always has been, and must always be, a clear yes or no. There are no gray areas in ethics. A given act, a particular course of action, a decision taken, is ethical or it is not. You are on the boat or off the boat. The line is crossed or it is not crossed. The disorder of modern problems is not a matter of traditional ethics.

The reason for the confusion is analytical. The ethics of the profession are governed by a fixed code of professional responsibility, and every fixed code is unable to deal with events outside its boundaries. What is lacking is some form of theoretical basis with which to analyze and evaluate ethics. What is needed is a theory of lawyer ethics.

It is reassuring to reflect that, in lawyer ethics, disorder is not necessary. To the contrary, changing and seemingly haphazard rules of lawyer ethics have always contained constant and simple underlying principles. The only adjustment that is needed in order to digest new, sometimes startling, situations and problems is to rediscover those constants. To find the underlying ideas, it is first necessary to filter all the arduously codified

rules, canons, and principles and remove from them what is irrelevant to ethical conduct. What remains is pure ethics. At that basic level an entirely different perspective can be established to deal with the strange new world of legal problems. It is a new perspective which could transform perceptions of turmoil into an awareness of the first steps toward progress. History has frequently recorded such shifts in perspective when great steps have been taken.

When men first went to the moon, the first lunar footsteps were themselves of only minor importance. The great transformation was the shift in perspective. Standing on the moon was merely a great adventure. Looking back from the moon, seeing the earth suspended over the abyss, was a revelation—a new point of view.

Even the greatest transformation in history required only a new viewpoint, not real change. That was when Copernicus took Ptolemy's sun from its resting place of fourteen centuries and lifted it into the center of the universe. In reality, he only saw it anew. Copernicus did not move the sun, but after his discovery, every view of the heavens has looked onto a different world, because he transformed the entire universe with an idea, a theory, a viewpoint, a perspective. A unified theory may not transform the smaller world of lawyer ethics, but it could open the way to a viewpoint from which otherwise ominous events would be seen as mere novelties.

THE IDEA OF A UNIFIED THEORY

In the known universe, in the whole history of the world, there have been few fundamental, unifying ideas. The best examples seem to be found in science. In physics, there are theories of matter and energy—albeit unresolved and endlessly changing—which bring some degree of order to the seeming chaos of the physical universe. In biology, there is the ubiquitous theory of evolution—flawed and incomplete as it may be—which provides some sense of structure to the teeming confusion of living organisms. The laws of physics and the ideas of evolution have no direct application to arenas outside their limited spheres, but they are paradigms for comparable theories in any arena, even lawyer ethics.

Scientific theories illustrate an important limitation of unifying ideas. For example, consider the history of cosmology. There, the dominant, unifying ideas have been powerful and widely accepted, but always dramatically wrong. The earth-centered Ptolemaic universe and the sun-centered Copernican universe each were fundamental, great concepts, carrying cosmology for centuries, but they were fatally flawed. The same might someday be said of the most recent concept, the Big Bang theory. What is im-

portant is that even in error these great theories were ideas from which other ideas would grow.

The idea of a unifying theory has long been a feature of physics. Newton set the standard for ambitious ideas by postulating a theory of gravity governing both the fall of an apple and the orbits of the planets. In the realm of physics, ambition is unbounded. Present theories provide a backdrop to an ongoing search for a scientific Holy Grail called the TOE—the Theory of Everything. Such a unified theory, presently (perhaps always) just out of reach, would gather together into a neat package all the forces in the cosmos—from the nucleus of the atom to the distant galaxies—which seem to resist fitting together at all. Such a unifying theory is more than an academic model. It is also a framework for solving practical problems. Some meaningful theory, some ethical Theory of Everything, should be developed to deal with practical, new problems in lawyer ethics.

THE ETHICS OF THE MEDIA LAWYER

The need for a unified theory of ethics can best be appreciated by reference to what is ethically perhaps the most interesting of modern media-legal events: the repeated spectacle of lawyers going to the media. It happens in every way the fertility of lawyer minds can imagine. The spectacles of advertising and solicitation are far surpassed by those rather pathetic, but quite effective, organized lobbying efforts by the armies of the litigation wars. They are the forces of tort-reform, the health police, the tobacco patrol, the class-action knights, the safety warriors. They come in diverse forms, but they share a devotion to the media. Print media are their nourishment, television their lifeblood. Behind lawyers who proudly carry banners of great lies and small distortions, competing forces march to the media wars, lining up on both sides of fabricated battle lines, defined not by terrain but by money. The fight claims to be for the favor of that prized maiden called the public interest, the common good, but much money is to be made before the smoke clears. Other lone soldiers in the media-money wars are equally dedicated. Those who cannot gather massive forces fight a guerilla campaign. They sell a client's inside story when the case is over, often without permission, to the profit of the lawyer and the commercial titillation of the public. Lawyers writing books, talking on television and radio, or otherwise engaging in public discussion about clients and cases, and about the lawyer's own ever-so-brilliant actions, sacrifice the wishes and privacy of the former client to the lawyer's self-promotion. To analyze the ethics of these media situations is difficult and confusing. Without a theoretical perspective, the result is unconvincing, the conclusion unsatisfying. A conventional analysis simply fails. The inquiry demands a new perspective, a theory of ethics.

The customary approach to any ethical issue is to scrutinize the Rules of Professional Conduct and apply them to the facts. Use of the media to sell the lawyer or sell a client's story can be evaluated that way. The result is unexpected. The existing ethical rules obviously do not prohibit a lawyer from advertising. What about selling a client's story without consent? Is such conduct unethical? The surprising answer to the question is simple—no.

To evaluate these lawyer-media abuses, the traditional ethics approach leads to only one directly applicable standard—Model Rule of Professional Conduct 1.8(d)—which prohibits public commentary other than statements about the public record, "prior to the conclusion of representation. . . ." By any objective analysis and by any reading of the Rules, there is simply no basis to extend that rule beyond its express terms to the time period *after* representation has concluded. During the representation, the lawyer's comments are limited to what is in the record, but afterwards there is really no limit other than with regard to client confidences.

Another indirect analysis of applicable provisions from the Model Rules of Professional Conduct yields the same result. A lawyer selling a client's inside story, even if it is to the profit of the lawyer rather than the client, can be treated as a special circumstance of conflicting interests between clients, with a slight variation. A lawyer selling the client's story—whether or not for money—is essentially acting in the lawyer's own interests, and a lawyer acting in his own interests is representing him- or herself. The lawyer thus becomes the client whose interests must be compared to that of the former client to determine if there is any prohibited conflict. After the client-lawyer relationship is concluded, the applicable standard appears at Rule 1.9, *Conflict of interest: former client*. The rule prohibits representation of "another person [whose] interests are materially adverse to the interests of the former client." By this analysis, the issue of selling the client's story comes down to a single concept: adversity of interests.

The extent of a lawyer's obligation to act in the client's interests is not specifically addressed in the Model Rules, but a sort of standard does appear in Comment Five to the conflict of interest provisions of Rule 1.7, where it is observed in discussing *Lawyer's Interests*: "The lawyer's own interests should not be permitted to have adverse effect on representation of the client." The standard, then, is a matter of adversity, whether of interests that are "materially adverse" to that of another, or of lawyer interests having "adverse effect" on the representation. In evaluating a lawyer's act of selling the client's story, then, the issue reduces itself to the question of whether the client possesses any interests in (that is to say, rights to,) the story of the case. The solution to the problem is evident, even if it is counterintuitive,

because the former client simply possesses no legally cognizable interest to protect. That the lawyer might benefit is not conclusive; what counts is whether the interests of the client suffer.

If a particular case had *not* gone to trial or to an open hearing in some other public forum, numerous privacy laws, plus the confidentiality required by Rule 1.6, would apply to prohibit a lawyer's public comment on protected material. However, the rule is essentially meaningless in the media context. Private cases do not interest the media. Media-legal issues do not usually arise from private problems. They emerge from public trials, which the media have constitutional rights to publicize. In those publicized cases, a lawyer discussing public information can hardly be said to "reveal" client information or to invade privacy. All the ethical rules in the world cannot change one unavoidable fact: After it has been publicized by the media, a case is simply not private.

What, then, are the client's proprietary interests regarding the story of the client's own case? There's the rub. A client has no proprietary interests. There is no "right" to the case simply because one's name is on the caption. A bystander, a courtroom observer, or a lawyer has as much right to discuss what transpires in open court as do the parties to the action. If there were proprietary interests, whose would they be? Would the civil plaintiff and defendant—or the prosecutor and criminal defendant—have joint ownership of the story? Would spouses granted a divorce somehow become equal partners in the story of their trial? Who would own multi-party cases? What of a witness compelled by subpoena to testify? That witness should have as much of an interest in his or her own testimony as the litigants who were harmed or helped. A spectator at the Super Bowl has as much right to publish a description of the game as does a player. The NFL might own the videotape, but anyone can talk about the game.

Those who condemn media-legal spectacles, and those who endure with great pain the annoyance of watching bad lawyers on TV talking about the work performed by good lawyers, are tempted to drift into a hazy area called the "appearance of impropriety," or the "public image" of the profession or some public "perception" of lawyers. Those areas are ripe for heated discussion and strong opinion, but there is no chance of finding an objective standard with which to measure them. There is only one standard for appearances, perceptions, and images: *De gustibus non disputandum est.* There is no arguing about tastes.

A better approach to evaluating these off-putting situations would be through the mechanism of a Theory of Ethics. Before attempting to find such a concept in the Model Rules it is necessary to find a worthwhile per-

spective, to reflect briefly on the legal profession's history. The practice of law is not a recent invention, and lawyer ethics is not a new idea.

HISTORICAL LAWYER ETHICS

The modern history of lawyer ethics is not the story of a systematic evolution. Instead, the growth has been an odd sort of development, born in one set of rules then jumping to another, with each replacement seeming only to reinvent and restate the originals. The result is not entirely unsatisfactory, but inevitably there always has been a slightly outdated set of rules, in need of repair and awaiting revision. As with any set of rules, they worked well when they worked, but situations inevitably arose that had not been contemplated by the drafters. There has always been a gap between the rules and the leading edge of reality.

Before assaying ethics codes, it is worth considering the reality of the history of lawyers. To idealize that history, or pretend modern practice is a refined development of an ideal origin, is to disown the past rather than learn from it. For two centuries the idea of *uniform,* let alone *unified,* standards of ethics was not a remote possibility. As explained in the preface to the 1969 ABA Code of Professional Responsibility, "[t]he original 32 Canons of Professional Ethics were adopted by the American Bar Association in 1908," based on an 1887 Alabama code and on "lectures of Judge George Sharswood, published in 1854 under the title of *Professional Ethics.*"

The 1908 Canons surely made no claim to universality, since the first professional bar association was not even formed until 1870 in New York City. The ABA itself was created in 1878, at a meeting of seventy-five out of the country's 60,000 lawyers. As late as 1902, six years before adopting the Canons, the ABA had less than 1,800 members.[1]

The profession's ethics history must be recognized as spotty. It is replete, not only with high-minded rules, but also with dishonesty and skulduggery. In its early days the only unifying principle was a public notion that lawyers were undesirable. Some colonial practitioners conducted themselves without regard for what are now accepted ethics standards:

> Ancient English prejudice against lawyers secured new strength in America. . . . [D]istrust of lawyers became an institution. Thomas Morton, who arrived in Plymouth about 1624 or 1625, has been called the first Massachusetts lawyer. He was jailed and expelled for scandalous behavior. Thomas Lechford, who had some legal

1. LAWRENCE M. FRIEDMAN, A HISTORY OF AMERICAN LAW 561-63 (1973).

> training, arrived in Boston in 1638. He practiced law in the colony as a courtroom attorney and draftsman of documents. Lechford had unorthodox religious views, and his attempts to practice law won him no friends among the magistrates, nor did the fact he meddled with a jury by "pleading with them out of Court."[2]

A renowned legal scholar, the redoubtable Roscoe Pound, observed that "[l]aw, as distinguished from laws, requires lawyers, and law and lawyers are little needed until there is a considerable economic development. A frontier society needs little more than offhand magisterial justice."[3] In the practicality of such a society, with a fairly simple economy, a formal organization of the bar and formal standards of ethics were slow to develop.

Wall Street lawyers originated the modern law firm in the mid-19th century, during a period when country lawyers, including Abraham Lincoln, rode circuit with local judges, on horseback and in buggies. In that century, standards for admission to the bar varied widely, with some local systems having none at all. Apparently, though, "[e]ven at the low point of professional self-government, no one practiced law without some pretense at qualification. Most lawyers gained their pretensions by spending some time, in training, in the office of a member of the bar."[4] Actual admission to practice was sometimes the arbitrary decision of one judge, frequently on the basis of an informal interview.[5]

The pre-electronic media were probably not a significant factor in promoting a lawyer's practice, but even in the absence of radio and television trials apparently were a popular form of entertainment.[6] In smaller communities, that situation continued well into the modern era. One story is told of a trial during the 1950s, scheduled to be held in a village tavern, which also served as the courthouse, in a small, rural town not far from Philadelphia. The opposing attorneys arrived from the big city to find a full courtroom, with most of the town's population in attendance. The lawyers announced to the judge that they had settled the case, at which time the judge admonished them to approach the bench. "I don't care if you settled the case. We are going to have a trial anyway," he said. "I sold tickets."

Since the Canons of Professional Ethics were adopted by the American Bar Association in 1908, rules of ethics have been codified in an *ad hoc*, but

---

2. *Id.* at 81-82 (quoting DANIEL J. BOORSTIN, THE AMERICANS; THE COLONIAL EXPERIENCE 197 (1958)).

3. ROSCOE POUND, THE DEVELOPMENT OF CONSTITUTIONAL GUARANTEES OF LIBERTY 57-58 (1957).

4. FRIEDMAN, *supra* note 1, at 278.

5. *Id.* at 270-73, 277-79, 564-66.

6. *Id.* at 273.

not entirely haphazard manner, and have followed a roughly consistent pattern in their overall approach to the way lawyers should act. Constancy in the various rules probably results from certain implicit, underlying principles, accepted even without being spelled out. The profession developed a widely understood idea of right and wrong, but no theory to capture it was ever articulated.

One reason a simple theory has not emerged to articulate accepted principles is that regulation of lawyer conduct has always gone far beyond ethics. When the past and present codes are stripped of their non-ethical components, what remains are several understandable central ideas. That is, a unified theory has been there all along. What is needed is only to find it.

If an ethics theory could be verbalized in understandable terms it would have two useful effects. First, it could lead to a more efficient process of adopting new rules in a time when old procedures do not keep up with the speed of change. Second, a theory of ethics would provide a compass for modern lawyers, who often must practice in unmapped territory. A unified theory might not equip every lawyer to define what is ethical, but for every new problem it might help each lawyer do the right thing.

Since the 1908 Canons, the various state codes governing lawyer conduct changed over time, but adhered to a similar approach, following the American Bar Association's lead. The 1969 Code reduced thirty-two original Canons to nine, but expanded them into forty disciplinary rules, with subparts, plus 137 other ethical considerations. The 1986 Model Rules of Professional Conduct replaced the nine canons with eight categories, but elucidated them in 146 rules, including subparts. In eighty years, the definition of proper lawyer conduct has either been reduced by deletion of 24 general statements or increased by the addition of 114 rules.

Despite numerous rules, code drafters seem to express an almost palpable yearning for a basic, underlying theory. The 1969 Code defined canons as "axiomatic norms" reflecting "general ethical concepts"; ethical considerations were "aspirational statements of objectives for lawyers" constituting a "body of principles" to provide guidance. A unified theory is to be found somewhere in those norms, concepts, objectives, standards, and principles.

A UNIFIED THEORY OF LAWYER ETHICS

Ethical standards and codes illustrate several basic, underlying theories. Dean Monroe Freedman, commenting on the incompatibility of ethics standards with the reality of legal practice, referred to "a law school dean

and leading member of the American Bar Association, who once remarked to me that all of legal ethics could be stated in a single precept: 'A lawyer should never do anything that a gentleman would not do.'"[7]

The "gentleman" theory of ethics actually may have captured accurately the ethical posture of the bar well into the 20th century, reflected in the Preamble to the 1969 Code:

> It is the desire for the respect and confidence of the peers of his profession and of the society which he serves that should provide to a lawyer the incentive for the highest possible degree of ethical conduct. The possible loss of that respect and confidence is the ultimate sanction. So long as its practitioners are guided by these principles, the law will continue to be a noble profession. This is its greatness and its strength, which permit of no compromise.

A view of law practiced by a homogenous body of gentlemen was perhaps meaningful when the better qualities of European aristocracy were emulated by many Americans, while at the same time aristocratic hypocrisy, immorality, and anti-democratic values were overlooked. That same aristocratic standard would be of little help in addressing media-legal issues of today in a profession that might well retain its nobility but, thankfully, could never be accused of being aristocratic. A new, underlying theory can only be found if all the non-essentials are stripped away from the many rules, standards, and ethical considerations codified since the 1908 Canons. The Standards for Imposing Lawyer Sanctions, published by the ABA Center for Professional Responsibility as a guideline for penalizing lawyer misconduct, groups lawyer duties into three areas: those owed to the public, to the legal system, and to the profession. The specific duties within that summary reveal a startling fact—there is remarkably little ethics involved in them.

Though necessary for other reasons, much regulation of lawyer conduct is simply not concerned with ethics. By any definition, ethics has a moral component, and moral considerations necessarily concern right and wrong. Portions of both the 1969 Code and the 1986 Rules set forth requirements and limitations regarding bar admission, reporting lawyer misconduct, publicity, forms of letterheads and signs, partnerships, referrals, legal fees, non-competition agreements among lawyers, preventing the unauthorized practice of law, actions by lawyers as public officials, comments about judges, and *pro bono* legal services. Those professional and administrative matters may be worthwhile, but they have no moral component. Forms of letterheads and the unauthorized practice of law might be impor-

7. MONROE H. FREEDMAN, LAWYERS' ETHICS IN AN ADVERSARY SYSTEM, at vii (1975).

tant to the public service role of the practicing bar or the protection of the public, but it cannot be seriously suggested that such matters involve conduct inherently wrong or immoral. The drafters of the 1969 Code of Professional Responsibility recognized these non-ethical distractions. After explaining the Code as another effort to examine and repair the original Canons, which had previously been reviewed without effect in 1928, 1933, 1937, and 1954, the preface quoted a 1934 address, *The Public Influence of the Bar*, by Mr. Justice Harlan Fiske Stone:

> Before the Bar can function at all as a guardian of the public interests committed to its care, there must be appraisal and comprehension of the new conditions, and the changed relationship of the lawyer to his clients, to his professional brethren and to the public. *That appraisal must pass beyond the petty details of form and manners which have been so largely the subject of our Codes of Ethics*, to more fundamental consideration of the way in which our professional activities affect the welfare of society as a whole. (Emphasis added).

The "petty details of form and manners" are perhaps necessary for regulating various aspects of lawyer conduct, but they are not ethics. None involve attorney-client relationships; none impact on the professional activities of a lawyer.

It is an unavoidable conclusion that real ethics must concern the moral conduct of a lawyer in the practice of law. Ethics must address the difference between right and wrong actions toward clients, courts, and other lawyers. The administrative requirements of being a member of the bar might be important, but they are not ethics.

After a century of written codes and rules, the legal profession seems to have recognized two relationships which are of significance to ethical principles. The two, together with an admirable ideal, are stated in the very first sentence of the preamble to the 1986 Model Rules of Professional Conduct, entitled *A Lawyer's Responsibilities*: "A lawyer is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice." With due respect for a sublime subject, responsibility for "quality of justice" goes far beyond the power of any ethical code to control. If that elusive concept is omitted, essential lawyer ethics can be included within only three general areas of conduct. Representing clients and acting as an officer of the legal system are two of them; the third, of course, is integrity. At the end of the day, when the dust settles, a theory of ethics needs to comprehend only those three essential components. When each one of them is considered separately, the result is a remarkably straightforward basis for ethics, in three simple statements.

Honesty

The ethical requirement of honesty is plainly stated in Disciplinary Rule 1-102(A)(4) of the 1969 Code, and Rule 8.4(c) of the 1986 Rules: A lawyer shall not "engage in conduct involving dishonesty, fraud, deceit, or misrepresentation." A requirement of honesty is essential to any meaningful ethics theory, but it falls surprisingly short of the full scope of ethical standards. Including subparts, the 1986 Model Rules of Professional Conduct contain more than one hundred rules, yet fewer than twenty of them directly address dishonesty. That is not because honesty is unimportant, but because there is more to ethics than telling the truth.

The Relationship to the Legal System

The obligations of a lawyer to the legal system are contained in ten separate rules, which appear unrelated, but actually have a sensible connection. Rules 3.1, 3.2, and 3.4 prohibit indulgence in frivolous claims, delay, and misuse of evidence. Rules 3.3, 3.4, 3.5, 3.8, and 3.9 mandate candor and fairness toward the tribunal and the opposition, including not only honesty but also voluntary disclosure of authority adverse to the lawyer's position, and a prohibition against injecting any improper influence into a contested matter. Rules 5.5, 8.1, and 8.2 recognize the responsibility of a lawyer to the integrity of the court system. These rules taken together stand for one proposition—the requirement that the lawyer respect the courts.

The Obligation to the Client

In lawyer ethics, the heart of the matter, and the essential element in evaluating the ethical component of media-legal problems, is the nature of the lawyer's obligation to the client. It has many facets, but the basic obligation is not complicated. Clarifying that obligation focuses the questions raised by lawyers acting through the media. That is, once the obligation is described, its boundaries define whether or not it is ethical for a lawyer to advertise, disclose a client's story after the case is over, or otherwise appeal to the court of public opinion, rather than the court of law. Rules 1.1 through 1.16 of the 1986 Model Rules address the client-lawyer relationship and include standards for specific aspects of representing the client: competence, diligence, keeping the client informed, confidentiality, conflict of interest, and safekeeping of client property. All of those standards share one common characteristic, the requirement that the lawyer's interests yield to that of the client. The principle goes beyond "adversity" and conflict of interest and can be reduced to that one idea: subordinating the lawyer's interests to those of the client.

The fundamental obligations of a lawyer can therefore be distilled into

three simple components. Taken together they form a theory of lawyer ethics:

> *A lawyer shall be honest and respectful to the courts, and a lawyer's personal interests shall be subordinated to the interests of the client.*

That is all there is. As a grand unified theory, or even a Theory of Everything, these three assertions are anticlimactic, but as a theory of lawyer ethics they should not be underestimated. Novel ethical issues can be approached in a meaningful way by resort to them. When new situations arise outside the code, drafters of new rules and lawyers in the middle of those novel situations can revert to these simple principles. That is all a theory represents. It is not an exalted statement of lawyer conduct. It is not a scholarly ideal. It is just a place to return in order to find a touchstone for reality.

Does a one-sentence theory answer every question and resolve every ethical problem? Of course not. A simplified theory is not a codification, governing all facets of professional conduct. The theory does not replace the Model Rules. The Model Rules answer conventional questions; they set the standard for those many situations which appear and reappear in the practice of law. The purpose of stating a simple, unified theory is to give coherence to the Model Rules and make them understandable. When ethical issues become muddled, a unified theory provides guidance and reminds a disoriented lawyer that there is a foundation; that is, even when there is erosion at the edges, the center is holding.

Does the three-part theory of ethics resolve media-legal issues such as advertising or selling the client? It does, but only by posing the same ultimate question raised by the analysis under the Model Rules. For example, after hard analysis of three different rules and comments above, the final answer to whether the selling of a client's story should be unethical came down to a further question of whether the client actually possessed an interest in the story of the case. By reference to the Unified Theory, the analysis arrives at the same destination. First, is such public commentary dishonest? No. Second, is it disrespectful to the courts or the legal system for a lawyer to go public with the case in the media? No, unless the lawyer implies criticism of the court or of the legal process, the relationship to the client's cause does not reflect adversely on the system. On the lawyer, perhaps, but not on the court. Third, are the lawyer's interests subordinated to the interests of the client? That is the question and ultimately the question is the same. And the answer is the same. That is precisely the point. The availability of a theory of ethics does not change ethics. It only brings focus to them. With a quick overview and a brief review of three ideas, at least a preliminary conclusion can be reached for even a novel media-legal prob-

lem. The entire subject of ethics can be clarified rather than further complicated. That, in itself, is worthwhile, because during changing times it is difficult to achieve clarity of vision when standing close to the action and hard to understand events when caught up inside them. Even with reliance on a Theory of Ethics, there is surely room for detailed rules to bear on the problems of advertising, media manipulation, and going public with a client's story. Rules are necessary to address the associated issues that go beyond a simplified theory. When a lawyer goes to the media, what is the obligation of disclosure to the client? What is the standard of consent? Is there some limit to the public utterances that are permissible without consent? Those are problems of codification, of amplifying an answer. A theory of ethics is intended only to help find it.

Should a lawyer advertise, give press releases, pander to the media, sell the client's story without permission? Probably not, but that is a subject for another day. What lawyers should do, and what the best lawyers would do in particular situations, may be important in defining the role and social position of the legal profession, but they are mere skirmishes in the war about lawyer conduct. They cannot be considered important matters in the real contest about what is right and wrong.

The battle of true lawyer ethics is where any ultimate standards of professionalism will be determined. In that battle, a Theory of Ethics can provide guidance and it can serve the important role of providing reassurance. When unsettling events like media spectacles begin to appear on the fringes, the existence of a theory allows those events to be seen as indicators of change rather than causes for despair. If a constant presence of some overriding theory can be felt, and if there is room within that theory even for the strange new media actions of lawyers, novel situations become less disturbing. With a unified theory to provide a foundation for ethics, some otherwise inexplicable lawyer conduct can be accepted as a small departure from the usual, not as the end of propriety. The legal profession can preserve the essence of its traditional standards while accepting the emergence of its inevitable future.