

FROM THE PRESIDENT

STEVEN D. BENJAMIN

Be Real

If you want to start an argument in a room full of lawyers, use the term “real lawyer.” If it is a room of public defenders, leave quickly. Public defenders bristle at the term, sensitive to a pejorative use.

NACDL membership represents the national criminal defense bar in all of its diversity. The Association’s members and leaders comprise every realm of criminal defense practice. Public defenders dominated our sold-out Mid-Winter CLE in Washington, further advancing this goal and moving NACDL closer to being as accessible to public defenders as to those in private practice. But during one of the breaks, a public defender friend pointed to a poster for the July CLE in San Francisco titled “Real Lawyers, Real Defenses.” “Really?” she said, “As in ‘I want a real lawyer?’ Public defenders hate that term. Is that deliberate, or just dumb?”

Ouch.

Our San Francisco program features some of our greatest lawyers, several of whom have distinguished themselves as public defenders. But my friend had a point. Generations of public defenders have endured the legacy of client distrust that accompanies appointment. They have all heard clients and their families complain about wanting a “real lawyer” who doesn’t “work for the state.” Because the members of the CLE program committee fully support public defense attorneys, I wondered how they had chosen a title that might seem so insensitive.



Isaac Harrell

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Back in Richmond, I began editing a talk I had given at a law school about the right to counsel. And there it was. Right at the end, responding to a symposium on reform that had included a suggestion that we relinquish certain defense tasks to non-lawyers, I had said, “That’s my request for all of us today, as we consider the failures of *Gideon* and the solutions toward moving forward, that we also remember the strength of having a criminal defense lawyer, a real lawyer, involved in every representation of the accused.”

I had used the dreaded phrase, but I knew what I meant. I was rejecting the idea of using a paralegal to fulfill *Gideon*. And my tone and delivery made it clear that the phrase “real lawyer” had a real and special meaning.

So what would that be? Surely we can classify a “real” lawyer as something more than a person who has a law degree and a license. For the court-appointed client, the additional distinction is simple — a real lawyer is a “paid lawyer.” As offensive as this distinction may be, it is not without logic. By paying for a lawyer of one’s own choice, a client feels entitled to greater loyalty and effort by virtue of the bargained-for exchange. This rationale underlies the innovative experiment of Travis County, Texas, to permit indigent defendants to hire counsel with state-issued vouchers. But aside from giving the client a sense of choice, the suggestion that a private lawyer is necessarily better is nonsense. We all know private “paid” attorneys — even some with big reputations — who we would not trust to carry the briefcase of a first year public defender. Real lawyers are not defined by pay. How much or even whether a lawyer is paid in no way determines the quality of their work or their commitment to a client.

Nor must real lawyers subscribe to any particular policies or politics. It is not inconsistent that we uphold and defend the Constitution, yet disagree about what it means. And while we believe in the rule of law, our finest work often challenges its substance and administration by the government and the courts. I have written before about certain values we share: our love of freedom; our fear of unchecked government. A real lawyer also values honesty, credibility, ethics, and moral principles. But beyond an allegiance to these fundamental values, there is no litmus test for what a real lawyer must believe. Our beliefs are as diverse as our personalities.

A real lawyer is also not defined by specialty. This year I attended each of our seminars dedicated to the defense of specific criminal charges, from DUI to drugs, from white collar to death penalty, from indigent to high dollar defense. At each place where criminal defense lawyers were gathered I observed the same dedication of purpose and commitment to ideals. What I saw was that the “real-ness” of the lawyer was not based

on the seriousness of the offense or the possible length of the penalty. A lawyer can be as real in traffic court as in the crucible of capital prosecution. A lawyer is as real in juvenile court as she is in a white collar law firm tower. These are all real lawyers. There is no distinction.

We need to answer this question for ourselves: what is a real lawyer?

At a minimum, a “real” lawyer is one whose work exhibits the essential quality of good lawyering — a careful questioning and attention to detail in the application of good judgment, informed by the law, to facts that are thoroughly determined. A real lawyer is one who embraces the rigorous methodology of her discipline, and possesses the skills required for her specialty. In our world, that means a trial lawyer who is trained, tempered, and practicing in the field of criminal defense.

Who is the personification of a real lawyer? American literature gave us Atticus Finch. Our real-life contemporaries include Steve Bright, Jeff Fischer, Judy Clarke, and many others. These lawyers are heroes to us; they are by anyone’s definition, real lawyers.

What do these real lawyers have in common? They are fearless, though they

may fear. They are virtuous, though they may err. They may even be poor, though they want for nothing that matters, because what they all have is an attitude, an attitude about freedom, an attitude that compels a defiance of unlawful authority as the voice of people from whom the government would take liberty or life. That attitude is so hard-wired into the real lawyer that she will sacrifice everything to the cause of justice, the rule of law, the best result for each and every client. No matter what.

A third trait yet defines the real lawyer. In addition to her attitude and willingness to sacrifice, the real lawyer possesses a loyalty of such immeasurable strength that this combination of attitude, loyalty, and sacrifice would also define the person who would stand side-by-side with you in combat or a physical fight. This is the person who would unthinkingly hurl herself between you and any threat to your life or who you are. This is the lawyer who accepts the ultimate responsibility for another person’s life. This is the lawyer who makes our criminal justice system so strong.

Defiant attitude, unselfish sacrifice, unwavering loyalty — these are so often the traits of the public defense lawyer.

No question. Few of us are willing to sacrifice as much to guarantee process for the accused, regardless of guilt, than the public defender or assigned counsel. Few of us fight as tirelessly for freedom or the preservation of life.

To be sure, this is not an exclusive group, for real lawyers practice as well from outside the world of public defense. Still, it is not the private practice lawyer who is challenged as not “real.” We should not stand silent when the “realness” of our brothers and sisters in public defense is questioned, for they are the backbone of the criminal justice system, and without them, tyranny and injustice would reign.

Now, if I were back in a cell with an appointed client, responding to the indignation that his family would be hiring a real lawyer, I would say at least this: “You cannot buy what makes a lawyer real.”

But these are just my thoughts. Please let me hear from you. Am I right that “real lawyer” has a real meaning that we should embrace? What answer would you give the appointed client who says he wants to hire a real lawyer? I would like to present your best responses to the membership at our annual meeting this July in San Francisco. ■



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