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The Ethics of Representing Environmental Clients

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THE ETHICS OF REPRESENTING
ENVIRONMENTAL CLIENTS

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THE ETHICS OF REPRESENTING
ENVIRONMENTAL CLIENTS
A Talk by Owen Olpin, Attorney
O'Melveny & Myers, Los Angeles

Natural Resources Law Center
University of Colorado School of Law
Distinguished Visitor
April 3, 1991

We want to open here with our distinguished visitor this year. Mr. Olpin graduated from Brigham Young University in 1955. He got his law degree from Columbia University in 1958. At that time he joined O'Melveny and Myers in Los Angeles. He's now a partner there. In the interim he has been a professor at the University of Utah College of Law and at the University of Texas School of Law. Mr. Olpin is a well-known figure in the natural resources legal world. And from there I will give the podium to Professor Getches to tell about that.

David Getches: Thank you very much. There are, of course, many things we could ask Owen Olpin to do today. He has a lot to say as you see from what he said about his background. He has a diverse background experience. Many of you know him, either because you were in the practicing bar or as students because you've heard that Owen Olpin is coming here, and that he's an interesting person, and that he's a leading practitioner at the law firm of O'Melveny and Myers in Los Angeles, that he's practiced in the areas of oil and gas, public lands, and environmental law. Many of you know that he's a Special Master in the Supreme Court's original case involving Wyoming and Nebraska. Others of you know him as a distinguished law teacher. He has taught at the University of Utah, also visited at Texas and recently at American University. He's the author of a number of articles that you run across in your water law case book and other places. He's a negotiator and a deal-maker. He's been involved in Alaska oil and gas development.

But as interesting as all these things are, at least as interesting to me, and I hope to you, is Owen Olpin's concern for the profession, for the natural world, and for family and human values -- things that really count. He cares for the future of lawyers in our society, for what they do for and to society. He has a great concern, and whether his concern is justified you can judge for yourself for the avarice that law is bringing out in people today. The lawyer jokes will not be indulged here, but this concern about whether or not law is a business or law is a profession is something that we all need to talk about. Will the Douglas Brackmans around us and within us win out is the question of the day. His concern for the out-of-doors has brought Owen into contact with the natural world. He's hiked through and I understand been lost in some of the most remote and beautiful places in the West, and indeed in the world. One of his recent treks logged several pounds off of him in Nepal. I have to tell you that once I called Owen -- and this story tells you a little bit about his character -- to speak at some occasion, he gave me the best excuse anybody's ever given me in turning me down for one of these things. He said that he and his teenage son were headed out to take a major trek in the mountains, that this was a matter of birthday tradition for his kids, and that tells you something about Owen the man.

I know a lot of students and a number of lawyers wonder if a love for the natural world, the unspoiled aspect of nature, respect for ecology, is mutually exclusive with representing

development interests and working for a big law firm in environmental law. These concerns are Owen's too. So we asked Owen to talk about the kinds of things that characterize him as a person to talk about the ethics of natural resources law and practice, and he's going to do that today. He's going to talk from his experience and I think his heart too.



Thank you, David. That was most generous. Not very well deserved, but thank you anyway. I want this monologue to end very quickly and I want to go back and forth in a hurry. But let me say a few things to set the stage. First, let me give you one personal statement, so you'll know a little bit more about me. It's something that I try to balance. Let me tell you also about a person who will soon become my partner in the Washington office of O'Melveny and Myers. Then let me set a couple of fact situations before you, and then let's talk.

First, as to my situation. I am, like most human beings, I suppose, made up of a lot of complex things, but perhaps the most interesting to today's discussion, let's pick one organization that I presently serve as a member of the board of trustees, and that is the Sierra Club Legal Defense Fund, not to be confused with the Sierra Club. The Sierra Club Legal Defense Fund is a public interest law firm that litigates on behalf of environmental causes. I am also a partner in the law firm of O'Melveny and Myers, and on two occasions I have represented clients who were opposed by the Sierra Club Legal Defense Fund. In both cases, I called the executive director and said, "Erect that wall again. I'm going to be representing the other side this time. Seal off any information so that I get nothing as a board member that has anything to do with this matter, because on this matter I'm on the other side." Have I taken a position that you regard as defensible? Or is that kind of arrangement indefensible as a matter of principle?

The second again is a new partner I'm going to have in the Washington office very soon. I had a fair amount to do with recruiting this guy. The guy's name is Richard Ayres. Some of you will have heard of him. Dick Ayres was one of the founding members of the Natural Resources Defense Council in New York. Very early on in his career, he moved from New York to Washington and has been very active for twenty years as a clean air lawyer in a public interest law firm. He completed a monument in his life's work last fall when Congress finally at long last passed the Clean Air Act Amendments of 1990.

For a number of personal and professional reasons he has decided that now it's time for him to have another chapter in his life. He is going to become my partner, and the primary thing that we expect that he will do is represent firms, corporations that are regulated by the Clean Air Act Amendments of 1990. You can imagine the kind of things he will be called on to do, the kind of advice he will be called on to give. Is there any principle applicable to him that ought to trouble us today as we talk about these issues? Has he sold out?

Now, let me give you the two circumstances that I want you to think about, and then we will just take off from there. Case number one -- actual case -- in 1969 the U.S. Justice Department brought an action against the four American automobile manufacturers, the then four major automobile manufacturers. The complaint was that there was a conspiracy among the automobile manufacturers to restrain the development and installation of anti-pollution technology for automobiles. Within a few months, within the same year that litigation was

settled, and a consent decree was entered. Not too surprisingly, the lawyers in the Justice Department who entered into that consent decree were criticized and criticized severely for not having been tough enough, and for having settled a case that ought to have been tried with the automobile companies being pinned to the wall.

More surprisingly there was a strong current of criticism in some quarters of the lawyers representing the automobile manufactures. The general tenor of that criticism was that what was involved was so important to our society and the alleged misconduct was so serious that the lawyers for the automobile companies should have urged, perhaps even have insisted, that their clients go through a public trial so that that issue could receive a public hearing. So, again, to be clear, what was urged was that the lawyers for the defendant automobile companies owed an obligation to society to at least counsel their clients against entering into that kind of a consent decree.

The second circumstance that I want to mention is outside the environmental area but helps make the point that I hope we will spend some time with. This is a recent opinion of the District of Columbia Federal District Court Judge Stanley Sporkin. He was dealing with a matter -- we won't get into the facts, because they don't matter for the purposes of our discussion -- but it was the Lincoln Savings and Loan debacle. I'm going to just simply quote a couple of sentences from his opinion. I don't need to elaborate. This tells what was in his mind.

He says, "Where were the outside accountants and attorneys when these transactions were effectuated? What is difficult to understand is why at least one professional would not have blown the whistle to stop the overreaching that took place in this case." Similar theme to the criticism of the counsel for the automobile companies. That is, did the lawyers for Lincoln Savings & Loan have an obligation to institutional values beyond those of the selfish interests of the clients? And did they violate those values? Judge Sporkin's sentences could be read to suggest that he thought maybe they did in failing to stop the abuses that led to the most serious of the savings and loans crises we have seen yet.

If I can talk you into it, I would like to stop just at that point and explore any dimensions of this thing that you want to explore, including getting a shot at me as to whether what I've done in my two capacities as lawyer for commercial interests and trustee of Sierra Club Legal Defense Fund is defensible. Your turn!

Q #1: In view of your claimed commitment to the environment, why do you need to represent those whose conduct is harmful to the environment?

A: Well, that's fair. Let me put it this way. My life would be less complex, certainly, if I simply acted as a lawyer only for those causes with which I was entirely comfortable. I would avoid ever having my stomach tied in knots and life would be much simpler. And I'm not sure you're asking exactly that same question, but that's the theme I hear from you.

The fact that I chose this profession, I think it would naive in the extreme to assume the day that I decided to become a lawyer, that like Perry Mason all my clients would serendipitously turn out to be innocent. I have represented some guilty scoundrels, not in the criminal sense, but in the noncriminal sense. I can't tell you that all of my clients have been

honorable, right people who should have won. So in part I realize in a way I'm ducking your question. But I made that choice when I decided to become a lawyer. Didn't I?

Q #2: You didn't agree to represent polluters did you?

A: Why not?

Q #3: Is it possible to counsel clients to do the "right" thing for the environment when that is not what they ask you to do? Can you just refuse to take clients that do things you don't like?

A: There's the answer. That's a part of the Faustian bargain if you want to call it that, that all lawyers make. Let me put it another way. A criticism that was voiced very loudly again and again back in the turbulent Sixties, goes something like this. I used it with a group of students at breakfast this morning. The criticism is articulated this way: In a society where law is a primary force, lawyers should not be secondary beings. Lawyers should be primary beings and take the burden of their advocacy, the outcome of what they argue for on behalf of their clients is something they should be able to live with for society as a whole. Now just so that we don't waste too much time, let me make clear how I feel about it. I think that theory is rubbish! Nonetheless, it is a theory that was espoused by a very popular and charismatic professor at the Yale Law School, Charles Reich, who had quite a following in the Sixties. I haven't heard much of Professor Reich lately, but he was a very effective spokesman for a point of view which I think is wrong. I do believe that when I became a lawyer, I was obliged to remind myself that I would not always champion causes that as a member of society I would favor.

Q #4: How have you personally responded when prospective clients have asked for assistance in achieving ends that you think are selfish and wrong because of the environmental harm that might be caused?

A: I'm not sure that the way I personally handled it is terribly relevant, but let me just spin off a few things and then you can chew it up. First, having taken the position I've taken, contrary to Professor Reich's thesis, I buy on to the proposition that as a lawyer in a very meaningful sense I am a secondary being. That the client is entitled to have my undivided loyalty, to assume that I will hold in confidence things conveyed to me in confidence, that I will not clutter my representation of that client with things that are extraneous to that client's objectives, whether you consider them selfish or otherwise.

Now, having said that, let me tell you about the two areas where I do declare my independence. One, the canons are very clear, the code of professional responsibility is very clear; there are some lines that I can and must draw. I can't help my client engage in obviously illegal conduct in the future. I can't do obviously improper things like fabricate evidence, etc. You know, the obvious ones, the easy ones, so that's very easy. But going off into that, there is another area where I can consistently declare my independence. When the doors close and the client and I are in the room alone, I can try to have the client listen to the better side of its passions. I can say, "Now wait a minute. Have you thought, of the public relations implications of the path that you seem determined to go down?" So I can joggle my client. But if the client doesn't listen, it's the client's word, not mine. I think I have to make the commitment.

The other area where I declare my independence is in the area outside of the four corners of my relationship with the client. Best example is to go back to my membership on the board of trustees of the Sierra Club Legal Defense Fund. Any client, who tells me that they don't like me serving on that board are going to be told the limits of their authority over my life. The fact that outside the relationship I might displease my client, I might support causes with which my client is in disagreement philosophically, but that are not involved in my representation of that client, is my business. In a sensitive case of the kind that I describe where I've been on the other side from the Sierra Club Legal Defense Fund, you can well imagine that there is some careful talking that goes on before I make those commitments. I make sure that people on both sides of that know where I am so that they can decide whether they're comfortable in having me proceed. And there will probably be occasions, though they haven't happened yet, where someone will be told, "Look, Owen, I just can't have you representing me because you have shown a philosophical bias by being a member of the board of the Sierra Club Legal Defense Fund that just makes me uncomfortable." At that point, I say, "Well you better get another lawyer with whom you are comfortable, because a comfortable relationship between lawyer and client is terribly important."

Q #5: I certainly take precautions to see that my actions as a lawyer would not cause me to be uncomfortable as a citizen.

A: How would you do that?

Q #6: In your terms, I would choose to be a primary being and take responsibility for the results of the representations I agree to take on. I would not be available to those who do harm. I see no reason why I need to be placed in a position to compromise my strongly held values about matters such as sound energy policy.

A: I have to come back to you and tell you again that I've conceded I'm a secondary being. I've conceded that as a lawyer I have bought into a profession that says that when I hire on, that I am carrying out my client's purposes, and beyond what I've already said in response to the previous question about the opportunities I have when the doors close to lecture a client on the better way, it strikes me that unless you can help me see a construct that I can deal with against my own vision of what the adversary system is all about, I can't be very helpful to you.

Let's take your example. You have certain strongly felt convictions about energy policy. Now where does that take you?

Q #7: I would refuse to take clients who act adversely to sound energy policy as I see it.

A: Sure, that's always an option. There will be no shortage of lawyers willing to represent an oil company or a coal company, and one choice you clearly have as a lawyer is to say, "My stomach won't tolerate it. I've got philosophical convictions that are too important to me. You'll have to get another lawyer." Sure, that's fine. I have no trouble with that. I would feel more concerned if you said that if there were an accused rapist or murderer because there might be a more difficult time finding someone to replace you to represent someone in that circumstance. But in the case of the oil company / coal company set up, I say fine, if you don't like it, don't take it on.

Q #8: Have clients sought you out to be their attorney because of your environmental connections?

A: That's an interesting question. As a matter of fact, I've had sort of side-bar conversations about that and let me tell you how they've gone. I can almost reconstruct the dialogue. I've never thought of it in the way you raise it, so it's a good question. As I go through this disclosure process that I've described where I make sure everyone knows what my history is, I've had one client say to me on one occasion, and I can now remember it quite vividly, "Owen, we're comfortable. We don't mind that you've been on the side of the Sierra Club Legal Defense Fund and that you're on their board. You know how those people think. You, in dealing with them as an adversary, will have perhaps an added notch of credibility."

Now, my answer when I heard that was to say, "Look, you're kidding yourself if you think they'll go easy because I'm on the other side. It ain't gonna happen. If there's anything you have to worry about, it is whether there might be an added combativeness or flowing of competitive juices, because a trustee is on the other side, and it might hurt you. But you're not going to get anything because I'm the opposing lawyer by reason of that relationship."

I think they believed me. I think I conveyed the message that if anything, that line of thinking was a reason not to retain me instead of to retain me. Is that responsive?

Q #9: Does SCLDF object to O'Melveny taking clients who have bad environmental records?

A: That's a good question. The answer is so far not an issue, and I'll tell you why. The concept of the public interest law firm, the way it was brought into being -- and I've been on several boards along the years -- the very concept is that we need to operate within the system, we need to create an institution that can fill a void in the adversary system and represent interests that might not otherwise be represented. One of the things we need is the support, the counsel of the regular bar. So they had to strike a bargain with people like me, the only way we can get people like Olpin to sign on and serve on the board is if we don't frustrate their professional aspirations. If I had to say I'm going to resign each time a case came along where I was on the other side, then all people who practice the kind of law I practice would be disabled from being on the board. Now that's one way to go.

Let me concede something. Some of my partners take the position that the mere possibility of the awkwardness you talk about should have had me decline to serve on the board. I disagree with them. I agreed to serve on the board. But it's a very good question and not an easy one to answer.

Q #10: What is your firm's pro bono policy?

A: A couple of things I can say in response. It's a pitiful amount, but the Los Angeles County Bar (I think it is the County rather than the State Bar) has come up with the notion that all lawyers in Los Angeles ought to give at least 35 hours a year. Our firm buys on to that. We urge that pro bono commitments be made. The firm goes so far as to have a committee that has as its principal function matching lawyers and pro bono opportunities so that there is a real world opportunity to do this sort of thing for lawyers who are so inclined. Apart from that there

is a general urging of lawyers to participate, to be good citizens of the community, and to contribute however the lawyers want to contribute.

Now, let's take it outside the environmental area. We're not talking about just environmental pro bono; we're talking about doing good things for the community. The law firm signs on very strongly that that's important, tries to facilitate it, tries to make that possibility a real one. One of the things that I worry a lot about is the increasing concern for the bottom line in law firms, whether that is going to continue to get bona fide treatment, whether we are really going to continue to be generous over time. But our law firm makes all of the right noises and I think largely delivers.

Q #11: It seems like you are two different people. How do you reconcile these two sides?

A: That's a good question. I don't know that I'll have a very satisfactory answer. I guess it goes back to an earlier question: Do you like complexity? I guess I do because I find myself in complex situations all the time and have learned to live with it. I guess I think I've made that accommodation satisfactorily. One thing that helps me is buying on to what I've said in disagreeing with Professor Reich. I think that our system, though not perfect, is a good one, our adversary system. One of the tenets of that system is loyalty to the adversarial process, to the principles that govern the adversarial process. Let me bring out a little bit more completely what I mean. I do not think it necessary or even appropriate that the Sierra Club Legal Defense Fund win all its cases just as I do not believe it appropriate that the Legal Aid Society get acquittals on all criminal cases. It is vital that the adversarial system be balanced in that everyone has access to legal services. Therefore, a large part of my agenda is achieved if the Sierra Club Legal Defense Fund is available and renders that service as needed, winning and losing cases as lawyers win and lose cases. And it doesn't bother me a whole lot -- maybe I'm insensitive -- if one of the cases they lose is one where I whop 'em. Now does that make me a disloyal member of the board of the Sierra Club Legal Defense Fund? An argument can be made, yea, it does -- I ought not to be trying to beat an organization that's a part of what I do. Life is complex.

Q #12: How can you represent someone that you know does not support the legal requirements for environmental protection?

A: That's a perfectly fair question, and it's one that people can differ about. Let me first take the case that most of us usually have less trouble with though it's not without its trouble. You are representing someone charged with a serious crime and however you came to know it -- let's not worry about it, but -- you know he's done it! You have no ambiguity in your mind that person is as guilty as all get-out. Armed with that knowledge, should that in any way compromise your professional obligation to your client? You might very well say yes. You might very well say, "Okay, that person is guilty. At some point if it looks like he's going to get off, I've got to try less hard, or I've got to do something so that society will come out all right on that. Most of us by the time we've decided that we're going to be lawyers, answer that fairly simplistically. That's not my role. My role as a "secondary being" is by definition a role that says my client can repose complete confidence in me, can know that I don't have a larger social agenda, that I have a professional obligation to that client within the bounds of the rules of the

game -- the code of professional responsibility and the rules of law that place limits on how I can represent my client's interests.

But think of it another way if you will. If the client thought that at some point you were going to step over on the other side and say, "Well, sorry Client, at this point I'm leaving you because my stomach won't let me go any further with you, and I'm going to help the other side just a little bit." What does that do to the kind of relationship that ought to exist between a client and a lawyer? It erodes it, perhaps destroys it. If we are right in the way we've structured our adversary system, that there is something important about the relationship between a lawyer and a client, that tends to support my proposition that, like it or not, to a very large degree we're secondary beings.

Q #13: Your position cannot be defended as being principled because you do not question or challenge conduct you know to be wrong. You do have freedom as a lawyer to ask hard questions and to learn whether you are being asked to be an instrument to cause pollution or other environmental harm. If you have the beliefs that you say you have, beliefs that cause you to support the Sierra Club Legal Defense Fund, don't you have to find out whether you are being hired as a lawyer to subvert the very values to which you subscribe. I'm sorry I can't let you off with what seems to me nothing more than a cop-out by saying that any harm done is done by the client and that you bear no responsibility for the skills you exert as a lawyer that make it all possible. You don't have to take on all matters that are presented to you. You can just say no.

A: I thought you were picking an argument with me, but by the time you were through talking it seems to me we're entirely in agreement. Can you help me understand where we're still arguing? Because you seem to be saying, and you tell me if I mischaracterize your position, that I do have freedom not to take on causes that I regard to be noxious, and that I ought to have a conscience, perhaps, in picking and choosing my clients; but I think I also heard you say that you will take the next step with me, that once I've said, "Yes, I'll take you on", that at that point my obligations as a professional follow. Now, am I missing something, because I thought that's the position I had rather clearly staked out.

Q #14: I do not think I should have to take on any client who is not pro-environment.

A: Do I take it, then, that for your part, you would choose only to take the cases with which you had a high -- let me put it in slightly colored language -- that you have a fairly high level of moral comfort? -- that when you hang up a shingle, if you're not a lawyer already, and I understand I've got both lawyers and non-lawyers in the room -- but when you become a lawyer, clients are going to have to pass at least some kind of moral litmus test or they're not going to become your clients?

Q #15: I concede that in some circumstances I may have an obligation to defend persons who are charged with wrongful conduct, even of conduct that is harmful to the environment. I would be willing to consider helping an individual who needs help and cannot afford a lawyer. I may feel an obligation in some circumstances to individuals.

A: But not to corporate America? That's not an issue?

Q #16: Do you ever turn down a matter? No matter how offended you may be at the conduct of a prospective client?

A: Sure. Good Question. I suppose that a part of your answer is that I do have my test. I have to admit to you that I draw lines. I have had clients come to me and I have shown them the door. I guess I sense that from the way that you and I are going back and forth with one another you would show more of them the door than I would. That's fine.

Q #17: And I think you should be more prepared than you seem to be to show the door to prospective clients who commit serious offenses against the environment and who purposefully undermine values you say you are committed to.

A: Let me go back to my opening comment about my would-be partner Dick Ayres, my soon-to-be-partner Dick Ayres. I talked to another lawyer, a very fine lawyer in San Francisco who's been involved in public interest law a long time, and I said, "Are you interested in considering a position with our firm?" And his answer was different than Dick Ayres. He said, "Look, Owen, it's appealing, there are many things about it that I would like, but I have made a personal choice" -- and it was your choice -- he said, "I've chosen for whatever purpose that I'll be always on the side of the white hats." I said "Fine, I understand. Go ahead. I wish you well, Roger." Dick Ayres, who in my mind is equally committed to environmental values, made the opposite choice. I don't fault either of them.

Q #18: What do you do as a SCLDF board member when an attorney wants you to approve litigation aimed at delaying development? How do you handle the "Rule Eleven" problem that such litigation might raise?

A: Let me quickly carve out some limitations on my expertise so you will know how much not to listen to me. First, I am not a trial lawyer; I am very seldom involved myself in litigation. I know what Rule Eleven is, and you have just heard the sum total of my expertise on Rule Eleven. So I'm a very poor person to talk to on that. But let me not duck your question entirely. Let me tell you that you put an issue that I think is a tough one. I have listened to people on the environmental side talk rather openly about delay as a weapon, and who use delay to try to kill a project by increasing the economic cost of the project. I think that does pose tough Rule Eleven kinds of issues. I guess one way to look at it is if you've got at least some colorable arguments that some judge might buy, then you're in a position back to some of the other things I've said. It's not your job to judge whether those arguments are ultimately good arguments or bad. That's the judge's job. Your task is to urge; the judge's task is to decide. And you can rationalize doing it if you want to.

I would also understand if you took a moral position that, "Look, in my scheme of things, that is an abuse of the system. I take seriously being an officer of the court and I'm not going to be a party to that."

Q #19: In your role as counselor to your clients don't you have an ethical responsibility to try to influence their actions to take a more pro-environment approach?

A: Or I can swallow hard and I can say, "Okay, the client has spoken" and I continue to be my secondary person. So I think the path in the financial institutions is probably less

controversial than in the environmental setting. The environmental setting, you make it a lot harder, because you inject human lives, human health, you inject things about which we all care a great deal. At bottom, I think I'd probably come out the same place, regrettably. I don't have any trouble with anything you say about the counseling function. I think a person who cares about social values probably ought to in that circumstance do a lot of juggling -- dreaming up creative arguments as to why the client ought to see the better way. Point out the unpleasantness of doing time for criminal environmental offenses. And more and more people are doing time for those offenses. Point out the down-side in terms of adverse publicity. Ultimately, however, let's take your precise case -- all a client wants is a couple more years of doing its evil deed. And the opportunity to persuade -- in this case probably a regulatory agency -- or a legislative body -- to hold off until more data comes in, to hold off while you know that there is no need to hold off because enough data is in and there is going to be a ruinous outcome.

I think, David, there is a First Amendment issue there. It's not said usually in the terms of a lawyer's obligation to the client, but one of our fundamental constitutional rights is to petition the government for a redress of our grievances, and if I think I have a grievance as a polluter to continue to spew hazardous wastes across the landscape, maybe I have a constitutional right to at least argue for that.

Maybe the best answer I can give you is, we're still secondary beings. Our job is to carry out the wishes of our client, the regulatory agency's job in a case such as you cite is to tell me no. But I have a hard time even in the tough case you give me in saying that I can ultimately insist that my client behave in the way that you and I would like the client to behave. I think my choice at a certain point is either to buy on or to withdraw.

Q #20: But aren't you better off not taking on those matters in the first place?

A: That's one way to see it. That's the theme that we have here, that the check-point is not to take on a representation that you find offensive. I deny no lawyer the opportunity to make that choice. I think that's perfectly permissible. But, Pete, again, my own view insists that if you stay there, you play the game the way the adversary system's rules have been written. You don't take on a client and then betray the obligation that you professionally accepted on behalf of that client. Even if the client is a scoundrel. Scoundrels are entitled too, otherwise I'd go broke.

It's been very nice to be with you. And thank you very much for stimulating a discussion that I'm sure is going to continue.

AN AFTERWORD

While my use of Professor Reich's pejorative characterization of lawyers as secondary beings helped me make my points, I should not have ended the discussion without stating that I dissent from the pejorative implications Professor Reich intended to convey. I do not think it fair or accurate to characterize a lawyer as a secondary being for elevating the obligations to those whom the lawyer represents over his or her own interests. Would we call trustees of trusts or guardians of minors or incompetents "secondary" because their fiduciary duties oblige them to subordinate their own interests? Why then is a lawyer different? Indeed why is it not acceptable and even laudable to subordinate one's own interest to the interests of clients, not even excluding corporate clients.

Thus, in the final analysis I reject Professor Reich's denigration of lawyers as secondary beings for their honoring professional obligations of loyalty to clients.

[end]