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Photo of Newman courtesy of the *Daily Memphian*, Jim Weber, photographer

Striking the Balance Between Business and Profession

Speech (as Delivered)

June 13, 2024

By Charles Newman

My father, who was a minister and frequent speaker, said the secret of his success was short speeches and even shorter sermons. This will be a bit of a sermon, so I will try to make it short.

But I do have some things I want to say and questions I want to ask.

Is the practice of law business? Of course it is.

Is it a profession? Of course it is.

But what's the right balance between the two?

It is an uneasy alliance and calls for a delicate balance, and I don't pretend to know exactly how to strike that balance.

In a speech in 1986, Chief Justice William Rehnquist said, "The practice of law has always been a subtle blend between a 'calling,' such as the ministry, where compensation is all but disregarded, and the selling of a product, where compensation

is all important. The emphasis is increasingly on making the practice of law more [like] a business.”

Something similar has happened in every part of our world — even in the world of sports.

Years ago, in baseball, the focus was on how the game was played — on pitching, hitting, fielding. Or so it seemed to me.

A few players made a lot of money, but most didn't, and didn't expect to. And we paid little attention to such things.

[The writer] Shelby Foote used to tell a story about how, when he was a boy, his uncle brought him and a friend to Memphis to watch a Yankees exhibition game. His uncle took them to the front desk at this hotel — the Peabody, right downstairs here — and said, “These boys want to see Babe Ruth.” The clerk said, “He's in Room 360.”

So they went up, knocked on the door and Shelby said an arm that looked like a piece of dark-stained oak opened the door.

The arm was Lou Gehrig's arm.

And Gehrig turned and said, “Babe, come out here. There's some boys who want to meet you.”

Babe Ruth came out and shook hands with them.

In those days even legendary players were totally accessible to fans and shared hotel rooms!

It was a very different and far simpler world from the world of big-time sports today. For some today, the focus seems to have moved up a level from how the game is played. The focus for them is not just on the game but on huge salaries, franchises, player contracts, labor negotiations, mergers, acquisitions and other financial and legal matters.

Some seem to know and care as much about labor, antitrust and franchise law as they do about how the game is played. Financial and legal matters have become the game for them. And for some in the upper reaches of business, business is said to have become a sport, in which money is said to be just a way of keeping score.

So at the highest levels there has been a merger of big business and big sport — in which sport is a business and business is a sport. The team owners and the highest paid players are among the great folk heroes of this society. Neither lawyers nor anybody else can be unaffected by the mythic force of all this played out daily before our eyes. Lawyers and law firms, like colleges and universities, and every other group in society, are inevitably influenced by all of this.

I'm not saying anything new here. The tension between the pursuit of profit and the maintenance of other values has existed for a very long time.

Almost 200 years ago, after his tour of America in the mid-1830s, the Frenchman Alexis de Toqueville said, “I

know of no other country where the love of money has such a grip on men's hearts.” (At the same time, he called lawyers “the Democratic aristocracy” of this nation.)

And that complaint by Justice Rehnquist that law has become too much like a business was 38 years ago.

The same concern was expressed by Sol Linowitz in an address at the Cornell Law School 36 years ago in 1988. Linowitz was one of the giants of American business, one of the founders of the Xerox corporation, with a deep understanding of the world of business. But he'd spent years practicing law and said, “When I [started] the law was an esteemed and honored calling. Lawyers regarded themselves as charged with a public trust ... obligated to play a role in the public life of the nation.”

But Linowitz said, “... something ... disturbing has been happening ... We have become a business dominated by [the] ‘bottom-line’ ... the computer has become the managing partner [and] we are ruled by hourly rates, time sheets, and electronic devices. We are making more and achieving less, and in the process, I am afraid, we have lost a great deal of what we were meant to be.”

Like many lawyers, I went to law school because I couldn't decide what else to do. About the time I was thinking about law school, I heard that the President of Duke, Terry Sanford, had said that lawyers are “the intellectual quarterbacks of society.” I didn't know quite what that meant, but it sounded good and since I hadn't had much success being a real quarterback, the idea appealed to me.

So I went to law school without knowing what I would do with a law degree.

I think the fact that so many of us came to the practice that way may have been a good thing, filling the profession with people not all of whom were mainly focused on the direct pursuit of money. (Most of us knew our chances of getting rich would be greater if we pursued money more directly.) Anyway, through a series of twists and turns I won't bother you with, after law school I came to Memphis to clerk with federal Judge Bailey Brown.

During that year I formed strong relationships with lawyers at a Memphis law firm — one of whose leaders was a remarkable, charismatic man who was much involved in progressive causes in the South. I decided to join that firm and stay in Memphis, a decision I've never for a minute regretted.

That firm, with which I've had the great good fortune to practice for about 60 years, has let me handle some matters that were not profitable and some that tended more to drive clients away than to attract them.

That firm's leaders viewed law as a high calling, a kind of priesthood, and they never allowed the pursuit of financial success to dominate their lives or the life of our firm. They were rarely to be found in the office at night or on weekends and

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Editor's Note: Charles Newman was the keynote speaker during the Bench Bar Luncheon at TBA's Annual Convention in June 2024. These are his remarks as delivered, lightly edited for print.

urged the younger lawyers to follow suit.

They valued their civic achievements above any material accomplishment and had passionate attachments to things having nothing to do with any financial result. They would have been horrified at the notion that their legal services could be valued in fractions of the hour. They were generalists in the extreme, believing every young lawyer should attempt to practice every kind of law.

Early on I got to participate in virtually every kind of legal matter, including all kinds of routine matters and some not so routine.

I had the extraordinary experience of being one of a small group of lawyers who represented Martin Luther King Jr. in his last days, opposing a federal court injunction against a protest march he intended to lead on behalf of Memphis sanitation workers. Lucius Burch was the real lawyer in that case, but he generously allowed the others of us to be a part of it.

On April 3, 1968, we met with King in his little bedroom at the Lorraine Motel, preparing for the hearing scheduled for the next day.

I sat on his bed and he sat in a chair inches away, our knees almost touching.

I sensed about him an almost visible and tangible aura of energy, wisdom and strength of a sort I've not encountered

before or since.

Some of this, maybe most of it, had more to do with my own experience, beliefs and youthful idealism than it did with any objective reality. But I think some of it was very real and grew out of the power of his convictions, their deep roots in the religious and philosophical tradition from which he came, the rightness of his cause, the urgency and crucial importance of the issues he was addressing.

I viewed King then, and I view him now, as a singular, possibly irreplaceable person, one of the few who may have changed the course of our history, without whom we might not have been able to navigate those troubled times as well as we did.

Late on the afternoon of the next day, after an all-day hearing in federal court, the judge announced he would allow King's march.

It was not a complex or difficult case. The facts and law were very much on our side and the outcome was never much in doubt. My role, as a very young lawyer, was a minor one.

After hearing the judge's decision, we headed back down Main Street to our offices.

As we walked back we heard sirens and were told King had been shot. Moments later we heard that he had died.

So it was a moving encounter with a very dramatic and pivotal moment in history.

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From left: Rev. James Lawson, Andrew Young, Lucius Burch, Charlie Newman and Mike Cody enter the federal courthouse in Memphis, April 4, 1968.

Courtesy of the Memphis and Shelby County Room, Memphis Public Library & Information Center.

And not an experience I would have been likely to have had if my firm had been too preoccupied with profit.

Just over a year later, I became involved in my first environmental case, working on a suit opposing the construction of Interstate 40 through Midtown Memphis and Overton Park. Not long after we filed it, it resulted in a landmark Supreme Court decision (for which a Washington lawyer, Jack Vardaman, not me, deserves the main credit).

But the Supreme Court decision was just the beginning of our fight, not the end.

It just gave us good definitions of a couple of words in a statute, but it took more than a decade of hard work before the matter was resolved. And until the very end it could have gone either way.

After a long struggle, many years after the Supreme Court decision, we prevailed and the proposed road was withdrawn from the Interstate system.

It was a hugely controversial matter. It is hard to convey to those who were not around then just how controversial it was.

The whole business, governmental and media establishment was arrayed against my clients and heaped scorn on them. Dismissing them as just “little old ladies in tennis shoes” who were out of touch with reality, and much worse.

The morning paper, the *Commercial Appeal*, was relentless in its attacks on my clients and their opposition to the expressway. So far as I could detect, not a single one of my partners agreed with my clients’ opposition to the expressway. And many of their clients vigorously disagreed.

But none of my partners ever put the slightest pressure on me about the case.

As a young lawyer, protected by that firm and by other members of the legal community, I felt completely free to represent my clients as aggressively as I chose.

The expressway matter led to my involvement in many other

projects throughout the city and across the state.

Far from being penalized for involvement in controversial cases, instead that brought me to the attention of some extraordinarily generous, public-spirited people in the business community who let me be part of their efforts to improve the city.

Nowadays, however, the pressures to make the practice more profitable are stronger than they have been within the memory of many of us here today — and getting stronger.

And they are putting increasing pressure on values that are not clearly profitable — and are threatening to squeeze those values out.

Consider for example those colleges and universities with skyrocketing tuitions whose presidents’ salaries sometimes exceed the budgets of their English and history departments.

And who have to devote virtually all their time and attention to raising more money.

And how about the recent agreement of a state university, Texas A&M, to pay a football coach (Jimbo Fisher) \$76 million to not coach there anymore, to just go away and make room for another coach, who will presumably be paid similar amount.

And how about the NCAA’s recent approval of the payment of billions of dollars to formerly “amateur” college athletes for their “services.”

Whether those were good or bad decisions is not my point and is a question for another day, and I cite them only to emphasize the ever-increasing strength of the embrace of money and profit in every part of our world. That increasing embrace of money and profit is putting an increasing squeeze on values that are not clearly profitable and threatening to squeeze those values out.

On the other hand, and however all that may be, there is no question but that many law firms should become more businesslike, and that by doing so, if handled right, that might strengthen firms and their ability to maintain professional values.

My own firm was able to allow me and others to handle unprofitable and sometimes controversial matters precisely because the firm was financially profitable.

Not every firm should be a pro bono, public interest firm. We need firms — and lawyers — that are strong financially and can use that strength in positive ways.

To play our role as what Terry Sanford called “the intellectual quarterbacks of society” and what De Toqueville called “the Democratic aristocracy of this nation.”

And to feed our families and pay those skyrocketing tuitions. And you are more likely than I am to know what the right balance is.

So I leave you with that assignment, that task.

Thank you. III