

Maine Law Review

Volume 55
Number 2 *University of Maine School of Law
Lecture Series*

Article 2

June 2003

The Lawyer as a Public Citizen

Cruz Reynoso

Follow this and additional works at: <https://digitalcommons.mainerlaw.maine.edu/mlr>



Part of the [Law and Society Commons](#), [Legal Ethics and Professional Responsibility Commons](#), and the [Legal Profession Commons](#)

Recommended Citation

Cruz Reynoso, *The Lawyer as a Public Citizen*, 55 Me. L. Rev. 335 (2003).
Available at: <https://digitalcommons.mainerlaw.maine.edu/mlr/vol55/iss2/2>

This Lecture is brought to you for free and open access by the Journals at University of Maine School of Law Digital Commons. It has been accepted for inclusion in Maine Law Review by an authorized editor of University of Maine School of Law Digital Commons. For more information, please contact mdecrow@maine.edu.

THE LAWYER AS A PUBLIC CITIZEN

ELEVENTH ANNUAL FRANK M. COFFIN LECTURE

Cruz Reynoso

- I. THE LAWYER AS A PUBLIC CITIZEN – ORIGINS AND MEANING
- II. THE STRUGGLE TO APPROXIMATE THE IDEAL
- III. THE LAWYER AS A PUBLIC CITIZEN – FOUR BASIC ELEMENTS
- IV. HOW MY BACKGROUND INFLUENCED MY VIEWS OF PUBLIC SERVICE
- V. FINAL WORDS

THE LAWYER AS A PUBLIC CITIZEN

ELEVENTH ANNUAL FRANK M. COFFIN LECTURE¹

*Cruz Reynoso*²

It was my honor to present the Eleventh Annual Coffin Lecture on Law and Public Service in the fall of 2002, on the lawyer as public citizen. I have always regarded public service as simply one of our ethical responsibilities as lawyers, something that we accept as a part of our professional lives. Consequently, I was very pleased to be invited by the University of Maine's School of Law to give a lecture named after Frank Coffin, whose professional career exemplifies the ethical ideal of the lawyer as public citizen.

It was a great pleasure on my visit to Maine to be a guest in the home of Judge Coffin, and to meet his wife and family. I brought greetings for the Judge from the immediate past president of the American Bar Association, who is from Maine, but also from two of my colleagues at the University of California at Davis School of Law who had worked with the Judge and who commonly refer to themselves as Judge Coffin's Davis Fan Club.

To me, the Judge is the epitome of a lawyer as a public citizen. He has been a lawyer, as we know, as well as a legislator, a federal administrator, a judge, a man of letters, while always remaining gentlemanly and gracious. I discovered on my visit that he is also an artist, and I must say that I was considering being an artist before I went to law school. Apparently, we are comrades in arms. These annual lectures on the law and public service are really an extension, aren't they, of the life of Judge Coffin and what his life has been about.

I. THE LAWYER AS A PUBLIC CITIZEN—ORIGINS AND MEANING

I have focused on the lawyer's role as a public citizen because I teach, among other subjects, professional responsibility or legal ethics. The American Bar Association recognizes the importance of this role in its first sentence in the Preamble of the Model Rules of Professional Conduct, entitled *The Lawyer's Responsibilities*. It states, "A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice."³ The first role is one with which lawyers and law students are very familiar. Most lawyers assume that role each day, and are quite conscious of their ethical responsibilities in terms of their clients.

It next states that a lawyer is "an officer of the legal system."⁴ Lawyers are quite aware of that role, too. It means that we take care, for example, to be punc-

1. This version is essentially the same version delivered on October 17, 2002.

2. Boochever and Bird Professor of Law, University of California at Davis, School of Law and Associate Justice, California Supreme Court (ret.). I wish to thank Laura Batie for her valuable help in preparing this lecture for publication, as well as Jarod Buna and the Law Librarians at the U.C. Davis School of Law for their able research assistance.

3. MODEL RULES OF PROF'L CONDUCT Preamble (2002).

4. *Id.*

tual when filing our briefs. We treat the court and our professional colleagues with courtesy and respect. However, in a recent federal case in California, there was a lawyer who said some not very nice things about the presiding judge, referring to him as racist and leveling other serious accusations. The judge referred the lawyer to a committee that then studied the case and recommended that the lawyer be suspended from practicing before the federal court for a number of months. The lawyer appealed to the Ninth Circuit, and the Ninth Circuit said, in so many words, "Hey, wait a minute. A lawyer ought to be free to say anything he or she wants, and should be sanctioned only if the judge is intimidated. But who could intimidate us? We sit to the right hand of God." They reversed the order. I always thought we should be courteous as lawyers, and respectful, but apparently, now the Ninth Circuit says not so. But I hope that is an exception. I still take seriously our ethical responsibility to be an officer of the legal system.

The final part of the Preamble's introductory sentence is a matter of great interest, but it has not received much attention. It states that a lawyer should be "a public citizen having special responsibility for the quality of justice."⁵ Since I was not sure what that phrase meant, I started researching its origin and meaning. I expected to find a history of the current rules of ethics, or an essay that would trace this notion of the "lawyer as a public citizen" to its source. I reviewed the record of the deliberations preceding the ABA Model Rules of Professional Conduct, which were adopted in 1983, and discovered no discussion there of the lawyer's responsibilities as a public citizen.

Yet, I knew the ideal had to come from somewhere. I next looked over the *Canons of Ethics*, which the ABA first issued in 1908, and which were based substantially on the Alabama code of 1887. It is fascinating how these ethics rules have endured and remain relevant to this day. California's modern rules of ethics borrow from the Alabama code almost word for word. For example, the seventh rule in the Alabama ethics code states that it is an "ethical rule of a lawyer never to reject for any consideration personal to themselves the cause of the defenseless or oppressed"⁶—a very high ideal. California's corresponding rule states that lawyers are "never to reject for any consideration personal to himself or herself the cause of the defenseless or the oppressed."⁷ The California legislature went back a few years ago and added "herself" to the statute, recognizing that there were an increasing number of women joining the bar, but aside from that addition it is practically the same wording. The Alabama code of 1887 is still very much alive and in effect today.

Similarly, there is Alabama's Fifth Rule of Ethics from 1887: "To abstain from all offensive personalities," and "to advance no fact prejudicial to the honor or reputation of a party or a witness unless required by the justice of the cause with which they are charged."⁸ Until 2001, the language in the California Code was practically identical. It exhorted lawyers "[t]o abstain from all offensive personality, and to advance no fact prejudicial to the honor or reputation of a party or a

5. *Id.*

6. CODE OF ETHICS ALABAMA STATE BAR ASSOC. No. 7, (Dec. 14, 1887), reprinted in HENRY S. DRINKER, LEGAL ETHICS 352-63 app. F (1953).

7. CAL. BUS. & PROF. CODE § 6068(h) (West 2003).

8. CODE OF ETHICS ALABAMA STATE BAR ASSOC. No. 5, (Dec. 14, 1887), reprinted in HENRY S. DRINKER, LEGAL ETHICS 352-63 app. F (1953).

witness, unless required by the justice of the cause with which he or she is charged.”⁹

I mention this because the code writers in Alabama, in turn, gave credit to Judge Sharswood who had been a chief judge of the Pennsylvania Supreme Court. Judge Sharswood wrote an essay on legal ethics, which he rewrote and published several times, the last time in the 1890s. The Alabama Code cites the judge and quotes from the essay, titled “An Essay on Professional Ethics.”¹⁰ It is evident that Judge Sharswood set down in black and white a constellation of ethical obligations long in evolving, including the notion of lawyer as a public citizen. The essay begins: “Professional Ethics. It is proposed to consider this subject under two general heads: (I) Those duties which the lawyer owes to the public or commonwealth.”¹¹ Under heading (II) are those ethical obligations “due from him to the court, his professional brethren, and his client.”¹²

We can see that these are not new notions, and yet they endure in our modern codes of legal ethics. Judge Sharswood’s essay continues:

The dignity and importance of the Profession of the law, in a public point of view, can hardly be over-estimated. It is in its relation to society at large that it is proposed to consider it. This may be done by showing its influence upon legislation and jurisprudence. These are the right and the left hands of government in carrying out the great purposes of society.¹³

Judge Sharswood goes on to explain, “The proposition would be still more accurate were it said—Society is constituted that man may be free—free to develop themselves—free to seek their own happiness; following their own instincts or conclusions. Without society—and government, which, of course, results from it, men would not be free.”¹⁴

So these concepts, these ideals, are deeply imbedded in the ethical responsibilities of the lawyer. Now, as an indicator, Judge Sharwood wrote his essay in the 1850s, a little bit before Alexis de Tocqueville traveled around our country and wrote about it in *Democracy in America*. You will remember that de Tocqueville came to this country in the 1830s. Here’s something that he wrote, that sounds, frankly, a bit strange now but it is an indication of how lawyers have been regarded historically, and the role they have played and our continuing responsibilities. De Tocqueville wrote:

In America . . . the lawyers form a political upper class and the most intellectual section of society. . . . It is at the bar or the bench that the American aristocracy is found. . . . When the American people let themselves get intoxicated by their passions or carried away by their ideas, the lawyers apply an almost invisible brake which slows them down and halts them. . . . Lawyers, forming the only

9. CAL. BUS. & PROF. CODE § 6068(f) (West 2001). The code was amended in 2001 in response to a 1996 ruling by the Ninth Circuit, holding that the prohibition of lawyers from engaging in “offensive personality” was unconstitutionally void for vagueness. Subdivision (f) of Section 6068 now reads, “To advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he or she is charged.”

10. GEORGE SHARSWOOD, AN ESSAY ON PROFESSIONAL ETHICS (5th ed. 1884).

11. *Id.* at 9.

12. *Id.*

13. *Id.*

14. *Id.* at 16.

enlightened class not distrusted by the people, are naturally called upon to fill most public functions.¹⁵

II. THE STRUGGLE TO APPROXIMATE THE IDEAL

I am sure it was those realities that de Tocqueville observed in America, which formed Judge Sharswood's views regarding proper ethical practices. But, of course, we know the ideals we espouse and the realities of practice are not always the same. In modern history, for example, it has been noted that when legal services came under political attack in the 1960s and 1970s, the American Bar Association was an important defender. The California State Bar Association also came to the defense of legal services. However, the State Bar did not support legal services when the California Rural Legal Assistance (CRLA) program was first formed. CRLA had established several offices because it represented migratory farm workers. Offices were needed as far south as El Centro, which is in the rich agricultural southeastern desert area of California, all the way up to Marysville and other areas in the northern part of the state. I was associated with CRLA at its inception. The State Bar opposed the establishment of CRLA and sent telegrams out to the various counties in California, asking them to oppose the opening of CRLA offices. At that time, the State Bar believed that each county should have its own legal aid office. CRLA was setting up offices across the state, so the Bar was opposed to it.

Also, of course, in 1908 when the ABA issued these rules of ethics that sounded so grand, it did not permit African Americans to be members of the bar. So, sometimes we have these wonderful ideals, but then we have to work to make the reality fit those ideals.

When we in CRLA established an office for legal services in Imperial County in about 1966, some local lawyers objected. They said that no poor person in Imperial County had ever gone unrepresented by a lawyer. I am sure they believed that to be the truth, but I knew differently. In fact, I joined the Imperial County Bar Association in 1959, and when I went to my very first bar meeting, I was elected secretary of the bar. At the moment I thought that even as a young lawyer, I had gained the confidence of my peers. But shortly I learned that it was a tradition in Imperial County to elect *any* new lawyer a secretary, because it was the secretary who did all the work for the local bar. One of my jobs as the secretary was to refer folk who needed legal services to lawyers who agreed to consult with them and charge just five or ten dollars for a half hour interview.

I received quite a few calls from a nearby military base, and I would then try to refer those potential clients to lawyers. Sadly, most of the lawyers were too busy. There were just two other lawyers aside from myself who accepted the referrals. One was a very socially conscious lawyer and the other one was the immediate past secretary who understood the problems I was having. We were the only ones who would interview those sailors (there were, believe it or not, sailors in the desert) and try to respond to their legal needs. So I knew there were many poor people whose need for legal services went unmet.

15. ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 268-69 (George Lawrence, trans., J.P. Mayer, ed., Harper & Row 1988) (1966).

After the office was established in El Centro, we staffed it with one lawyer. We saw there was a greater need and we fortunately had more lawyers, so we sent a second. Then we sent a third, and finally we sent a fourth lawyer. There were four lawyers doing nothing but representing poor people in Imperial County. Still, they were forced to develop a priority system for the types of cases they would take, because they could not meet the needs of all of the poor who came through the doors.

That is how divorced we can get from reality, even though we may live in a community and we think we know what the reality is. It is through such experiences that I have come to believe in the importance of being conservative when making judgments about what reality is. Consider Alabama in 1887—the days of Jim Crow. Nearly fifty percent of the population was Black at that time. They could not attend public schools. State labor codes provided that if a person had a contract to perform labor, it was a crime to leave that employment. A person could be arrested for breaking a labor contract. There were also laws that permitted the arrest of people for loitering. The law left much discretion to the local peace officer, which resulted in a disproportionately large number of African Americans being arrested. Those arrested were subject to a fine or, if they could not pay, sentenced to jail time. The law then provided that those serving sentences could be sold to private individuals who paid their fines. In one case, several teenagers were arrested and sentenced to jail for four and one half months unless they could pay the fine of six dollars and fifty cents. They could not pay the fine so they were sent to jail. Someone came and bought them for forty dollars, and then they had to work for that “employer” for the duration of their sentence. There was a whole mechanism of society basically to keep Blacks from fully participating in the society of Alabama. Yet, at the same time, we have this wonderful Code of Ethics calling on lawyers to be public citizens having special responsibility for the quality of justice.

So, it seems to me that we have to keep in mind that even though we may have these great ideals, we have to look at reality and determine whether we are meeting those ideals. As lawyers, we are privileged and it is easy for anybody in a position of privilege to forget that they are so privileged.

I read a newspaper article recently in which the author sought an explanation for why we have had such a problem with the ethics of corporate CEOs lately. He came up with several reasons, of which I will just touch briefly on four. These are the reasons that CEOs fall. The first is the belief that “I deserve it.” That is, a person gets into a position of power and begins to tell himself or herself, “I deserve it. I have worked hard in my life. Why shouldn’t I take home a few ten or twenty million dollars a month? I mean, it’s only natural.” The second reason is the idea that it’s “society’s blessing.” This is a really important cause of ethical corruption. People look at the CEOs and say, “Gee, you’re so important. You’re such a wonderful person,” and the CEO starts believing it. The third reason is “competitiveness gone awry.” And the last explanation was that “power corrupts.” The CEO has a lot of power. He or she then begins being a little careless about how and when to exert that power. I must say that members of the bar might benefit from some reflection on these explanations, particularly with regard to the dynamics involved in the ever-increasing salaries at large firms, for instance. Any of us working in the professions have to be vigilant about not abusing the great power we have.

The same danger exists in the medical profession. Some of you may have read articles or a book about Michael Swango titled *The Blind Eye*.¹⁶ Michael Swango was a doctor who began his medical career as an intern at Ohio State. Sad to say, he was a sick man and he killed people. The FBI thinks he may have killed up to sixty patients, but every time a patient died under suspicious circumstances, his peers refused to believe Dr. Swango was responsible. He continued to poison people, and was observed by hospital staff who reported the improper injections to hospital administrators. He denied it. The departments where he worked quickly accepted Dr. Swango's denials, while dismissing the accounts of other witnesses. They were no doubt concerned about the reputation of the hospital if word got out that one of their doctors was suspected of doing such terrible things. And in fact they did not report him, but they dropped him from their internship program. He then went on to work in one hospital after another.

I relate this story because it illustrates so well how we can hold strong ideals of what it means to be a profession of service, but still be blind to the reality in front of us. Just as physicians who take the Hippocratic oath must consciously strive to uphold it in their daily practice, so we as lawyers have an obligation to bring the stark reality closer to the ideal lawyer envisioned in our code of ethics.

III. THE LAWYER AS PUBLIC CITIZEN—FOUR BASIC ELEMENTS

After some reflection I have come to the view that four basic elements are important in defining the ethical ideal of the lawyer as a public citizen. I have drawn these from my own experience.

First, I think that being a public citizen is related to the lawyer's role in representing clients and in being an officer of the court. A lawyer cannot be a good public citizen without being a good and honorable lawyer. It is important that lawyers be respected in their work.

Being a good and honorable lawyer means keeping in mind the common good. Every lawyer has different interests and experiences, yet can find a way to integrate those interests with a commitment to the betterment of society. We all have an ethical obligation to reserve room in our caseload for reduced fee or pro bono work. I know that there is great work being done in the state of Maine in terms of pro bono. There has also been discussion about reduced fee programs to provide legal services to those with low incomes. Too often there are persons who come to our offices in need of legal services, but who do not have money. We need to examine whether it is best to provide services for free, or whether a reduced fee will best serve the client.

I had not been a lawyer in Imperial County for too long when a couple of retired farm workers came to see me. Now "retired" did not mean they had a pension; it just meant that they were too old to work in the fields anymore. So they came in to see me because they had no resources, and they wondered whether there were any programs that could help them. The wife suffered from a goiter condition, a large growth under her chin. She also had open sores on her legs. The husband, we discovered later, was legally blind; that is, he had a visual acuity of

16. JAMES B. STEWART, *THE BLIND EYE: HOW THE MEDICAL ESTABLISHMENT LET A DOCTOR GET AWAY WITH MURDER* (1999).

less than 20/200. I agreed to try to help them. At that time the regulations in welfare departments were not well catalogued. I told them I was not sure if I could help, but that if I could I would charge them one hundred dollars, which they could pay at five dollars a month. If I could not help them, I would not charge them anything. Fortunately, I ran into a welfare worker who was just wonderfully helpful in going through all of those sometimes dusty regulations.

We eventually found that California had a pension program for those who did not qualify for Social Security. Both husband and wife were entitled to that modest pension. The husband was entitled to a second pension because he was considered legally blind, and the wife was entitled to medical attention at the local county hospital. Her goiter was operated on, her legs were cured, and they had a few dollars coming in each month. My wife and I later visited their home. Their home had a dirt floor and no running water. They had to walk to a faucet a block away for water. They were poor, but at least they now had a few dollars a month coming in and they were able to live with dignity. Every month they would come in and pay the five dollars. I cannot count the many new clients referred to me by them. Prospective clients would come through my doors and announce, "We were recommended to see *their* lawyer."

Even though I later served as a legal services lawyer, I think it is good to charge something. The client becomes more involved in the case. I represented some groups in political matters, and I remember one group in particular that retained me on a pro bono basis. I testified for them, and I worked nights and weekends on their case, but within a couple of years they seemed to have lost interest. At that point it was hard to know if I even had a client. I think that if I had charged them even just five or ten dollars a month, it would have sustained their interest and kept them involved. These are some of the experiences I think about when I consider the role of a private attorney as a public citizen.

Then let me tell you about Nancy Mintie, who graduated from UCLA in 1979. She knew that after she graduated she wanted to represent poor people, and I mean really poor people. She thought that the people who most needed representation were the homeless people in downtown Los Angeles. A good person loaned her a garage, in which she set up her office and her home. She started representing poor people in downtown Los Angeles when they had problems with Social Security, health services or other similar legal issues often encountered by the poor. She had no money except for the small amounts she received under the regulations when she won the benefits to which her clients were entitled. One time she was visited by a gentleman in a three-piece suit, and although she was initially rather suspicious, it turned out that in fact he greatly admired her work and wanted to know how he could help. He happened to be a very well connected partner in a large downtown firm. Once she got over her suspicion, the two had a good long talk. He later persuaded several foundations to contribute money. Her project is now a foundation itself and it has many lawyers participating on a pro bono basis, representing the poor people of downtown Los Angeles. Nancy Mintie is a person who combined being a public citizen with being a lawyer.

For that matter, prosecutors and public defenders also embody that ideal. It is the role of prosecutors to represent the government and to protect the public—the most important function of government. Public defenders safeguard the constitutional rights of those accused of threatening our safety, and ensure that when the

government proposes to take somebody's freedom away, it is done constitutionally and legally. Surely, these lawyers are performing great service as public citizens.

So my first point is to emphasize that the roles of lawyer and public citizen are not separate. They interrelate and coincide. But being a public citizen goes beyond that. My second point is that a lawyer is a public citizen by working within the bar associations.

I did not join the American Bar Association for many years because of what I considered its racist background. Then in 1972, an African American friend who was a federal appellate judge in San Francisco called me and asked if I would be willing to serve on the Section on Individual Rights and Responsibilities. I said, "I do not know, what would I have to do?" When he told me I had to join the ABA, I replied that I had never joined in light of its shameful history. But he assured me that the organization had changed and he told me about some of its work on behalf of civil rights. I have been a proud member since.

The ABA has gone through a transformation from a time when it was an expressly racist organization and it opposed legal services programs, to the present, when it is now the champion of civil rights. It has committees working to make the legal profession more representative by ethnicity, race, and gender, and it is very supportive of legal services. In my view it is a great organization, but it has taken a lot of work by lawyers, good-thinking lawyers, to bring it about.

I also mentioned the California bar. It initially opposed the establishment of California Rural Legal Assistance, but then agreed to a compromise. We entered into an agreement with the bar that allowed them to appoint two members of the Board of Governors to the Board of CRLA. Those appointees were supposed to be watchdogs, but after serving on the board for only a few months, became our strongest supporters. In fact, the California Bar Association itself is now one of the greatest supporters for legal services programs in our state. It also now has a pro bono program. Its support of legal services has been a real source of strength for the people of California.

I was so proud of our country when our federal government initially decided to establish the Legal Services Program. It seemed to me that the institution of that program represented the next great step after the Supreme Court decided that the accused were entitled to legal assistance. It was a great step forward, and brought our country a little bit closer to those ideals of true equality and representation in our courts.

The legal profession is not yet perfect. We still have to think hard about how to resolve some enduring problems within it. The profession is not yet as female friendly as it should be, for instance. I have known many women lawyers who either quit their firms or work part-time in order to have time to attend to other responsibilities. Women lawyers in the ABA have spoken eloquently about the reality that the bar has to become friendlier to all of us—male and female.

Certainly, we have some distance yet to go before the profession is representative of the various ethnic and racial groups that make up this country. In California, Latinos are now 35% of the people and only 3% of the bar. African Americans are about 9% of California's population, and 2.5% of the bar, while Asian Americans are about 11% of the population and 3% of the bar. Indeed, we have a long way to go, but lawyers in the ABA and other bar associations have been working on these issues. So, my second point is that we need to work within our profes-

sional associations.

The third element of the lawyer as public citizen, and perhaps the most important, is that the lawyer must participate in the public life of the community. To be a public citizen is to lead a life like Judge Coffin's, working in the public sphere as an elected official, for example. Those of us with an interest in politics have a duty to run for public office. I believe that everybody ought to run for public office at least once, because it opens our eyes to the diversity of the community in which we live. Before I ran for office I thought I knew the area in which I lived, but as I campaigned I met so many people and organizations and encountered so many different interests that I never would have known about otherwise. I also tell people that if they are lucky they will lose. If they win, they will have the opportunity to serve the public locally or nationally. I was lucky—I lost! But it was such a learning experience.

There are so many opportunities for public service. I have talked with countless mayors who have told me that they no longer appoint lawyers to special commissions—the Water Commission, the Police Commission, and so on—because within a year or two of accepting, the lawyer appointee will quit, saying, “Gee, I just do not have time anymore.” It seems to me that as public citizens we have an ethical duty to make time. I have always believed in a balanced life. We ought to take a little bit of time for art. We should take time to read nonlegal books. Of course we have to take time with our families, and certainly with our profession. But we also have a responsibility to reserve time for the public weal. As lawyers we have special knowledge; we know better than most the relationship of government to citizen and resident. We have a duty when called upon by elected officials to participate in government, to do so.

I recently listened to a lecture on tape by a lawyer from Mississippi. He represents plaintiffs in personal injury and civil rights cases, and he was addressing defense attorneys. He talked about the clients he represented and how often the Fifth Circuit overturned jury decisions. I believe he said that the Fifth Circuit overturned forty-nine percent of all the jury cases that were appealed. As you might imagine, he was being critical of the Fifth Circuit, but he made an interesting observation. He noted that every Fifth Circuit opinion that is favorable to the jury verdict was written by a judge who had an interest in civil rights before coming to the bench. Likewise, every opinion written by a judge that was antagonistic to the jury's decision was from a walk of life quite different from his disadvantaged clients. His point was that we are influenced by who we are. Politics, he noted, is such an inherent part of the administration of justice. That means that we, as lawyers, have a duty to participate in the political system. It seems to me that such participation is our responsibility as public citizens.

Another important way of participating in public life is to be active in community organizations. I want to emphasize that: community organizations, not legal organizations. I have been pleased and saddened by an evolution. When I became a lawyer, I was particularly conscious of California's Latino community. There could not have been more than two dozen Latino lawyers in the whole state. Yet, all of them were very active in the community. Presently, we have several thousand Latino lawyers in California, but only about ten percent are really active in community organizations. I am pleased with the greater numbers of Latino lawyers, but lawyers are not as involved in community organizations as they were

many years ago.

When I first started my law practice, I was asked to join, and I did join a group called the Community Service Organization (CSO). I was telling Judge Coffin that I knew César Chávez before he started organizing farm workers, and that he had been a staff person for the CSO. The members of CSO were mostly poor people who lived in what we called El Centro's East Side, principally Latino and African Americans but there were a few Anglos also. My wife, Jeannene, taught classes for the immigrants who wanted to learn English, and I helped with citizenship classes for those who wanted to become citizens, and we urged them to become citizens.

The CSO members from the East Side complained because they did not have sidewalks and curbs, and even in the desert, it rains. The rain made the streets muddy and difficult. The people thought that the city officials had no interest in their community because it was poor and minority. When I heard about that complaint I figured that there might be a legal response. I spoke to the city officials and, sure enough, there was an old statute that permitted a locale to form a special district, allowing it to tax itself. By taxing themselves, they could have the city improve the streets and put in sidewalks and curbs. The people from that neighborhood were interested enough that they were willing to set up such a special district. The city, in turn, was so pleased to have these citizens come forward, that it agreed to pay all of the legal costs of setting up the district and to pay fifty percent of the cost of the improvements. The experience made me realize that if I, as a lawyer, had not been a member of that group, they would have remained disenchanting and angry at the politicians, not knowing that, in fact, there could be a resolution to the problem that was really hurting them.

But lawyers will not know of the needs of poor people and others in the community unless they participate. To be public citizens, we need to be active members of the community. Whether we are working with the Boy Scouts or the Future Farmers of America or 4-H (in which my children were involved), or being a member of the Board of the National Resources Defense Counsel, or participating on the local PTA, we ought to be active in the community. I tell young lawyers, "Look, if you're appointed to a housing commission, about ninety percent of the work you do will be absolutely boring, and you will spend time there on things that you do not think are important. But from time to time an important issue will come up and you can do real good by being there and having done your homework. You can do what is right by your community." That is an important way of exercising your responsibility to be a public citizen.

My fourth point is this: lawyers have a duty to speak out, especially in hard times. I was a young man during the McCarthy Era after World War II, and since I was always in favor of civil rights, I remember well the attacks upon folk who believed in civil rights in those times. Often, they would be accused of being Communists or fellow travelers. Even Martin Luther King, Jr. did not escape such charges. If lawyers had spoken up more often, perhaps the political demise of Senator Joseph McCarthy would have come earlier.

I was drafted after college in 1953 and when the military asked if I was interested in being in the Counter Intelligence Corps I agreed—it sounded better than being a foot soldier. At that time, and particularly in a unit like Counter Intelligence Corps, Joseph McCarthy was like a hero because he was anti-Communist.

In one lecture during my training one of the officers began railing against supporters of civil rights until I could not remain silent. I got up and disagreed with everything he said. My fellow soldiers kidded me afterwards—the Korean War was then going on—and they said “Well, Cruz, we’ll see you in Korea.” They were sure that I was going to be dismissed from the intelligence school and sent to Korea right away. I think the officer must have thought I was kidding because apparently he never reported me, and I graduated as a Counter Intelligence Corps agent.

Those were dark days for civil rights. As we look back on them today, most agree that our government was wrong to have so restricted people, and those who imposed restrictions on their own actions and speech were also wrong. But then in 1954 Joseph McCarthy went from hero to the enemy of the military during my time at the Counter Intelligence Corps school. The McCarthy hearings took place then, and the famous question was posed to Joseph McCarthy, “Sir, have you no shame?” Suddenly he fell in the minds of many Americans from hero to scoundrel. They realized that he had accused people of being Communist when they were not, and that he did it solely for self-aggrandizement. Even within the military he went from being a hero to being an enemy. He had, by that time, even accused the military of being Communist.

So I became interested in how things can quickly change when folks speak up. And if more folks who spoke up had been lawyers, they might have brought us, as a nation, back to our common senses.

But now we have another crisis—the crisis of 9/11. It makes one reflect on how we have responded to other crises. Did we respond the right way in the McCarthy Era? I think most observers would answer “no.” Did we respond well during the World War I, when we hated and feared Germans so much that some states prohibited the teaching of the German language? It was customary at the time for school children to cut out of their songbooks any song written by Wagner because he was a German. There was an intense anti-German feeling. Finally the Supreme Court decided a case in which it ruled that one’s language is part of one’s ethnicity, and that is one of those substantive due process rights that the government cannot take from a person.¹⁷ Because the issue went to the Supreme Court it was resolved, but imagine the trauma to the young teacher who was arrested on a criminal charge for teaching the German language. Every historian looks back now and says that was not the right thing to do. Did we do what was right in World War II by interning the Japanese Americans? Even Congress has passed a statement of apology. All of us agree that we did not do the right thing at that time.

It is incumbent upon us to analyze carefully as to whether we can protect our security and our civil rights at the same time. All too often, it seems to me, folk are willing to say, “We have to give up our civil rights to protect our security.” Perhaps it’s true, but history has shown that when in the past we have given up our civil rights, it has not helped improve our security. The Japanese Americans were loyal Americans and interning them did not help us fight the Second World War any better. The German Americans were marvelous Americans, and discriminating against them did not help us fight the First World War. When Abraham Lincoln suspended the habeas corpus, all historians agree that it did not help the North

17. *Meyer v. Nebraska*, 262 U.S. 390 (1923).

fight the Civil War any better. Are we accepting the curtailment of our civil rights now simply because our national political leaders tell us that it is necessary? I suggest that as lawyers we have a duty to look at the arguments carefully and, if we disagree with our neighbors or friends, to speak out and to say, "I agree with you on this, but I disagree on that." As lawyers, as public citizens, we have that responsibility.

I had a meeting with first-year law students because I was awarded an academic chair for the Teaching and Study of Freedom and Equality (what lawyer could say no to a chair like that?). One of my projects has been to have dinners with first-year students to talk about these issues. We were discussing some of the post 9/11 restrictions on civil rights, and practically every student disagreed with those restrictions. I thought it odd that almost every student disagreed and yet, in the political discussions in Washington, so many legislators simply believed the restrictions necessary. Does it mean that those of us who disagree are not speaking out? If so, I think we have a duty to speak out and have people decide based on an open exchange of ideas.

The great strength of a democracy is that ideas are placed on the table for everyone to see and discuss. People are then free to make up their own minds instead of relying on voices from Washington to convince us of one thing or another. Among those with the greatest influence, owing to their knowledge of the workings of government and the relationship of government to citizen, are those folk called lawyers. In this way our profession carries with it the responsibility to be public citizens, and the responsibility to speak out.

IV. HOW MY BACKGROUND INFLUENCED MY VIEWS OF PUBLIC SERVICE

I welcome other ideas about what it means for a lawyer to be a public citizen and the ethical responsibilities that entails, because my thinking has clearly been influenced by own background. I grew up with immigrant parents, who came from Mexico in the 1920s, during very hard times. My folks came from a region that was often said to be more Catholic than the Pope. They left in the aftermath of the great revolution that started in 1910 to oust President Díaz, a dictator, and which went on until about 1920. The new government had an anticlerical bias to it, imposing restrictions on the Catholic Church, which gave rise to a counterrevolutionary movement in the area from whence my folks came. My folks were not combatants, but the troops would come and steal a horse in the name of the federal government, and then the local insurgents, who were called Cristeros, or followers of Christ, would come by and take a cow in the name of Christ. So my folks said, "We've gotta get out of here." They went north through Arizona, working on the railroad, until they worked their way to California, where they ended up as farm workers.

My dad was a "trabajador de planta," a steady worker. He held a steady job even during the Depression, which was quite exceptional during that time. Growing up I lived in a little town called Brea in Orange County, California. At that time, the population was something like two or three thousand. In those days, there were actual orange groves in Orange County. When I was seven years old we moved to a little rural barrio called Alta Vista near the small town of La Habra, where only Mexican and Mexican American people lived. In Brea there had been

very few Mexican families so we spoke Spanish only at home, but out on the sidewalks, we fought in English, we played in English, we read comic books in English, and we really grew up bilingually.

My English was actually pretty good. I remember that in the first grade, a teacher was trying to help a little girl who could not read a certain word, and apparently I improperly butted in and read it for her. The teacher was disturbed and sent me to the principal. Well, I was terrified of the principal so instead of doing as my teacher said, I went outside and sat on the school stairs all day long. I never went to see the principal. When my buddy came out at the end of the day, we ran home as fast as we could. The next day, I went to school and the teacher did not say anything about it. I think she thought I had gone to see the principal. So I know that I was pretty bilingual.

Nonetheless, when we moved to Alta Vista we looked for a school, and we found a place that looked like a school. It was two stories, brick, and it had a playground. We tried to sign up there but they told us it was not our school—we were to go to Wilson School. So we went to Wilson School, which was a bit less impressive. We noticed that everybody there was Spanish speaking and we asked, “Why are we being sent to this school?” We were told that we were being sent to Wilson school to learn English. Well, we were moderately suspicious that was not the reason since we knew English perfectly well. In time we realized we were attending a segregated school. California, at that time, had segregated schools in areas where there were a great number of Chicano, or Mexican American families. Brea’s schools were not segregated because there were too few Chicano families, but La Habra had several nearby barrios.

And segregation, I learned, was not good for public schools or society. We very much developed an “us and them” attitude. I recall that a minister from our barrio moved to an Anglo part of town. (When talking about these matters folk in California have their own way of characterizing people by ethnic or racial groups, so that we recognize Asian Americans, Blacks, Indians, and Chicanos, and everybody else is Anglo. I was telling Judge Coffin and his wife about my interview with the then-Chair of the Equal Employment Opportunity Commission when he offered me a job. He was Jewish, so when I told him that he looked at me and asked me incredulously, “You mean in California, I’m an Anglo? Me, a good Jewish boy!” I just said, “Sorry, sir, but in California you’d be referred to as an Anglo.”) So when this minister moved into the Anglo part of town, we children talked about it and we were afraid that he and his family would be physically attacked. In fact, they were not, but the fears we had convey a sense of that “us and them” mentality. It was “We Latinos,” or “We Chicanos,” and “They the Anglos.” It was not a good system.

Years later when I was in high school, I talked with the superintendent of the La Habra public schools about the segregation. He suggested that a group of parents from the barrios present the issue of desegregation to the school board. Eventually in 1940s the school was desegregated. The community reaction to desegregation impressed me. The school board had said they feared violence if they integrated the schools. At the meeting when they announced the desegregation plan, however, the audience—which was about half Anglo and half Latino—broke into applause. I remember thinking to myself that the people were ahead of the elected officials. The community wanted equality, particularly after the Second World

War in which men and women had lost lives fighting for democracy. The soldiers came back and they wanted true democracy at home. So I was pleased to see that reaction.

Our families also influence our thinking. During the Depression there were people we called hobos, who we would now refer to as homeless, and somehow we got more than our share of hobos coming to our house. I read some articles later that claimed that during the Depression hobos had signals and ways of indicating which houses were friendly. Ours must have been one of those houses because we got a lot of hobos. And my mother always put on this great meal for them—with carnitas, frijoles, tortillas, and the whole kit and caboodle, a real feast—and we would complain to her that she fed the hobos better than she fed us. And she would not deny it. She would say, “We’re lucky that during the Depression you have a father who’s working full time and we have a duty to share with others who have less than we do.” I have always remembered that.

My dad said the same thing. We really learned about the dignity of hard work from him. He always used to say, “We ought to recognize that we are all children of God. You notice how when dogs meet, they have a way of recognizing they come from the same family. If dogs can do it, why can’t we as human beings recognize that we all belong to the same family?”

Even as a youngster I saw so many injustices, not only the segregated schools, but the barrios were not well served. Sometimes folk were arrested when they should not have been. And I saw that people were not well served by the legal profession. My mom and dad looked for a lawyer one time and could not find one in Orange County that spoke Spanish. In fact, my dad told me that he normally depended on the local court interpreter for his legal advice. So maybe that is something that influenced me in giving up my promising career as an artist to become a lawyer. It seemed to me that folk get justice, in part, by finding lawyers with whom they feel comfortable. I do not want to be misunderstood. Of course, that is not to say that only Black lawyers can serve Black people and only White lawyers can serve White people. Lawyers can serve anybody, but the public as a whole deserves to have in the bar lawyers of all races, and all ethnicities, so that people can find a lawyer with whom they really feel comfortable. That makes it easier for the lawyer to represent the client’s best interests.

V. FINAL WORDS

I will end with words from a speech that Abraham Lincoln delivered,¹⁸ in which he said that he understood that our country’s founders recognized the reality of slavery, but that they also had those high ideals of equality and of freedom. He said that when signing the Declaration of Independence they intended to set a standard maxim for a free society, the ideal toward which we should strive. He said that while the Constitution recognized the reality of slavery, we have a duty to work day in and day out to hold the nation to its highest ideals—the ideals of freedom and equality. We, as lawyers and public citizens, have the ability to make sure that tomorrow approximates a little bit closer those ideals, for the benefit of all of us.

18. Abraham Lincoln, Speech on the Dred Scott Decision (June 26, 1857).