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PROFESSIONAL CONDUCT

A Special Responsibility for the Quality of Justice

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Special to the Legal

It's hard for us to keep up on the news during the summer with so many distractions: the shore, the mountains, the Phillies. But there were some news stories that we didn't miss, and Judge Ronald L. Buckwalter's sentencing of former state Sen. Vincent Fumo was one of them.

Although we expected public expressions of disagreement with the sentence in the media, we were surprised by the personal attacks leveled against the judge, including those contained in an editorial in this paper Aug. 14 headlined "Some Judges Understand the Evil of Corruption, Some Don't Have a Clue." It was painful to see a well-respected judge who has devoted his career to public service, first in Lancaster County and then in the federal judiciary, disrespectfully and unfairly described in these pages as a "poster boy ... for anyone who thinks corrupt public officials get preferential treatment." In addition, some of the comments from our own legal community were contrary to our clear obligation to demonstrate and promote respect for the integrity of the justice system.

The preamble to the Pennsylvania Rules of Professional Conduct 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 a special responsibility for the quality of justice."



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This "special responsibility" is based, in part, on the fact that an adversarial system relies on our expertise and diligence to achieve a just result. But the preamble also tells us that our profession serves the public and that we have a responsibility to maintain its reputation and its independence.

The preamble goes on to note that "[a]s a public citizen, ... a lawyer should further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority. ... A lawyer should aid the legal profession in

pursuing these objectives and should help the bar regulate itself in the public interest." This language serves as a reminder that the awesome powers that our licenses carry require us to support the judiciary when they are under fire for the legitimate, albeit unpopular, exercise of their judicial discretion.

Depriving someone of his or her liberty is the most solemn and difficult task that a judge faces. In our white-collar practice, we encourage judges to use their authority and discretion to vary from the sentencing guidelines, consider the deprivations and degradations of incarceration and temper their sentences with an acknowledgment of the positive accomplishments and contributions of our clients. Federal law requires that judges impose a sentence that is no harsher than necessary to achieve the four goals of sentencing: deterrence, punishment, rehabilitation and protection of the public.

Unfortunately, we live in a society that is prone to equate a measure of tempered mercy with unwarranted leniency. A sentence that accounts for individual differences such as age, health or past good deeds is susceptible to being branded as "coddling criminals." Our "special responsibility for the quality of justice" requires us to support the courts, as they fulfill the most difficult role that our Founding Fathers laid out for them. As Alexander Hamilton explained in Federalist 78, "[T]he courts of justice are to be considered as the bulwarks of a limited Constitution." As a result,

the Constitution granted them lifetime tenure to ensure “that independent spirit in the judges which must be essential to the faithful performance of so arduous a duty.”

Some local bar associations did promptly and thoughtfully speak out against the unwarranted attacks against the judge. Philadelphia Bar Association Chancellor Sayde J. Ladov said, in a letter to the editor published in *The Legal Aug. 25*, “Judges take an oath when appointed to the bench swearing fairness and impartiality when handing down sentences appropriate under the law. These principles make our justice system the most respected in the world. It is up to all of us, particularly members of the legal community, to recognize and respect this role.”

The Lancaster Bar Association, in a letter to the editor in the *Philadelphia Inquirer*, signed by the current and 18 former bar presidents, said, “The easy thing for a judge to do when sentencing after a high-profile case would be to throw the book at the defendant. To analyze the facts with the courage it takes to make an independent judgment is the lonely task we assign to judges. But it’s a task that, properly completed, highlights their role in our democratic society, and one which we have seen Judge Buckwalter perform time and time again.”

These comments highlight the importance that the bar places on impartial and independent courts. In recognition of these principles, the American Bar Association has put together a resource kit for bar associations to use in responding to unfair, unduly harsh or improper criticism of the judiciary. (See www.abanet.org/judind/resourcekit/home2.html.) Using these resources, the Indianapolis Bar Association created a Judicial Criticism Response Committee. The committee’s goals are to:

- Respond if the judicial systems is subjected to unjust attack.
- Foster and maintain confidence in the orderly processes of our courts among the citizens of this state and the nation.
- Explain the difference between valid, constructive criticism of the decisions of our courts and baseless charges.
- Assist the public in understanding the difficult burden of the courts to strike a proper balance between individual constitutional rights and the rights of the society.

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- Assist the public in understanding the operation of courts, judicial procedures and the administration of justice.
 - Bring to the attention of proper authorities fair and well founded criticism of the operation of the judicial system.
- The former chairman of the committee, Kevin P. McGoff, a partner at Bingham McHale in Indianapolis, explained in an e-mail interview that the committee was formed “in response to incidents where judges or rulings were unfairly criticized, but the

judicial canons prohibited judges from clarifying these misstatements in the media. A part of the Bar’s mission, and our obligation as lawyers, is to foster and maintain confidence in the orderly process of our courts.” McGoff also says that the committee has written letters in support of judges about two or three times in the past few years. These letters direct readers to the bar’s Web site, where the criticized opinion is posted in its entirety, in an attempt to further transparency and provide complete information to the public.

The Phillies are still playing, but summer is over, though the media’s focus on Fumo and Buckwalter surely isn’t. Future stories will probably continue to express criticism of the Fumo sentence without providing a clear explanation of its historical and legal context. Whether we agree with the sentence or not, our role in this very public debate is to provide educated, balanced and thoughtful commentary that supports respect for our justice system as a whole and our judges in particular. •