

The duties of the legal profession

Profession



The legal profession is a form of public trust which is given only to those qualified enough to uphold the law and assist in the administration of justice. It is a duty of public service which involves sincerity, integrity and reliability, in which pecuniary considerations are a mere by-product, notwithstanding establishing lawyer-client relationships in the highest degree of fiduciary. The lawyer is an oath-bound servant of society whose conduct is clearly circumscribed by inflexible norms of law and ethics to which the ends of justice are the primary considerations.

In rendering legal services to his clients, he must observe utmost fidelity to the cause of his client regardless of his personal beliefs on his client's guilt or innocence, as even the most guilty of all criminals can still avail of the different protections afforded by the law. Sometimes, though, lawyers are faced with legal complications in providing the most adequate defenses for their clients especially when the latter are found to have deliberately violated the laws of the land.

These acts do not include justifying circumstances in criminal prosecutions as these are been deemed lawful when convincingly proven in court. The acts contemplated here are acts which are considered, on its face, patent violations of the law bereft of any legal justification. However, these illegal acts do not preclude the rendering of legal services for the protection of their rights. Among the conditions and circumstances that utterly warrant the defense of illegal acts are those which are challenged based on constitutional issues involving the due process and equal protection clauses, and constitutionally-protected freedoms such as free expression and the right to privacy.

The due process and the equal protection clauses have been two of the most important protections afforded by the US Constitution to the American people to safeguard them from the unwarranted intrusions of government into the free exercise of their democratic rights. As a result, many previously considered violations of the law were overturned by the US Supreme Court for abridging the due process and equal protection clauses of the constitution, to the extent that entire statutes were declared unconstitutional and taken off the statute books.

In the case of *Lawrence v. Texas*, two gay couples were charged and convicted for “ deviate sexual intercourse, namely anal sex, with a member of the same sex,” (539 U. S. 558) and violating the Texas Penal Code Ann. §21. 06(a), which provides that a person commits an offense if he engages in deviate sexual intercourse with another individual of the same sex. The homosexual couple asserted that their conviction was an infringement of the Equal Protection and Due Process Clauses of the Fourteenth amendment, in which the majority opinion answered thus.

These matters, involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment. At the heart of liberty is the right to define one’s own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State. *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U. S. 833 (1992)

Such homosexual acts in the privacy of a person's home is subsumed in the concept stated above and their autonomy as persons to decide for themselves the concept of their own existence and meaning must be respected by the Court and the law. While convicted in the lower courts for violating the law, they were vindicated by the ruling of the Supreme Court based on their constitutional challenge.

A case that was won based on procedural due process is the case of *Tumey v. Ohio* in which Tumey was arrested and charged with the unlawful possession of intoxicating liquor at White Oak, another village in Hamilton county, Ohio, on a warrant issued by the mayor of North College Hill. The mayor of the town then proceeded to try and convict Tumey under the existing law. His conviction was challenged based on the pecuniary interest of the mayor in convicting Tumey as he stood to gain from the amount of the costs in each case, in addition to his regular salary, as compensation for hearing such cases.

There is, therefore, no way by which the mayor may be paid for his service as judge, if he does not convict those who are brought before him. The US Supreme Court looked favorably on the assertions of Tumey, reversed his conviction, and remanded the case for further trial, due to the utter lack of impartiality in the previous proceedings with the mayor sitting as a judge. This is proof once again that constitutional challenges protect the rights even of persons seen to have deliberately violated the law.

In *Lanzetta v. New Jersey*, the appellants were indicted and convicted under the New Jersey Statute which prosecutes " any person not engaged in any

lawful occupation, known to be a member of any gang consisting of two or more persons, who has been convicted at least three times of being a disorderly person, or who has been convicted of any crime, in this or any other State, is declared to be a gangster.

The US Supreme Court declared the statute unconstitutional for being repugnant to the Fourteenth Amendment as the word “gang” and “gangster” is vague such that even those who belong to a group whose objective may be legal may unnecessarily be covered. Hence, due to vagueness, there is no sufficient warning to the public as to what exactly is proscribed by the law. The persons in this case, even if found to be true gangsters in a socio-cultural sense, had their convictions reversed simply due to the vagueness of the law.

In the case of *In Re Lynch*, John Lynch was released from prison that supposedly condemned him for life behind bars as the US Supreme Court found the penalty for this offense of indecent exposure too cruel for such a light offense, relative to more heinous crimes with the same penalty. Lynch was definitely found guilty of his crime, yet the law still afforded him adequate protection despite his offenses when it was challenged based on the constitutional issue of disproportionate punishments which, although not cruel or unusual in its method, it is so disproportionate to the crime for which it is inflicted that it shocks the conscience and offends fundamental notions of human dignity.

In *New York Times v. Sullivan*, the libel suit of L. B. Sullivan against the New York Times did not earn the affirmation of the US Supreme Court as it held

that the interest of the public outweighs the interest of any other individual. While the New York Times might, on its face, erred in accurately reporting the facts of the civil rights demonstration involving Martin Luther King, the newspaper cannot be held for its criticisms of the official conduct of public officials. In this case, the freedom of the press saved the New York Times from settling the multi-million dollar libel suit filed by Sullivan even if the lower courts found them guilty of the offense.

In the famous case of *Griswold v. Connecticut*, Drs. Griswold and Buxton were found guilty of violating 53-32 and 54-196 of the General Statutes of Connecticut and fined \$100 each for giving information, instruction, and medical advice to married persons as to the means of preventing conception, notwithstanding examining a married woman and prescribed the best contraceptive device or material for her use. The US Supreme Court reversed their convictions based on a discussion of the penumbra of rights which are formed by emanations from those constitutional guarantees that help give them life and substance. This is shown in past cases wherein, though not directly involved, the right to privacy was upheld. The court, in verbatim even said -

The present case, concerns a relationship lying within the zone of privacy created by several fundamental constitutional guarantees. And it concerns a law which, in forbidding the use of contraceptives rather than regulating their manufacture or sale, seeks to achieve its goals by means having a maximum destructive impact upon that relationship. Such a law cannot stand in light of the familiar principle, so often applied by this Court, that a " governmental purpose to control or prevent activities constitutionally subject

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to state regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms."

Yet again, the US Supreme Court intervened in expunging responsibility from individuals who were found to be in blatant violation of the existing laws of the land.

In all of these, it is patently clear that individuals found to be in deliberate violation of existing laws can still be afforded protection by our system of laws. While many other conditions and exceptions exist to warrant the defense of supposedly erring individuals and groups, the best way of going around the violations of the law is through a sound constitutional challenge before the courts of law, from the lowest courts all the way up to the US Supreme Court.

It must be remembered that these are done not only for the sheer obstinacy of defending the cause of the client but also in pursuit of upholding the rule of law, the integrity of the courts and assist in the administration of justice. The duties of the lawyers are not only to prosecute and defend, but also to ensure that justice is done to all those who deserve it.

Cases Cited

1. Lawrence v. Texas, 539 U. S. 558 (2003)
2. Tumey v. Ohio, 373 US 510 (1927)
3. Lanzetta v. New Jersey, 306 US 451 (1939)
4. In Re Lynch, 8 Cal 3rd 410 P. 2d (1972)
5. New York Times v. Sullivan, 376 US 254 (1964)
6. Griswold v. Connecticut, 381 US 47A (1965)