ANNOUNCEMENT

The American Society of Law & Medicine proudly announces its new **student membership** category, effective January 1, 1978. Letters announcing the program have been sent to all professional school deans, the directors of medicolegal centers, and student organizations. The Society hopes that by involving more students with the complex issues that interrelate law, medicine and other professions, meaningful and constructive dialogue and understanding will be promoted amongst those who recognize the importance of medicolegal issues.

Student membership in the Society is open to all professional school students interested in medicolegal issues and problems. Student members will be entitled to all the regular benefits of Society membership, including annual subscriptions to MEDICOLEGAL NEWS and the AMERICAN JOURNAL OF LAW & MEDICINE.

The annual student membership fee has been set at $22.00. Contact:

American Society of Law & Medicine
454 Brookline Avenue
Boston, Ma 02215

It's Up to You

American Society of Law & Medicine 1978 Membership Goal

One person can make a difference. One-to-one recruitment by Society members is the best way to expand the Society and its educational programs. Talk to your friends and colleagues about the American Society of Law & Medicine, its unique cross-disciplined approach to medicolegal problems and issues, its two publications and the many benefits of membership. If you provide the names of potential members, the Society will be pleased to send them a sample issue of MEDICOLEGAL NEWS as well as information about the AMERICAN JOURNAL OF LAW & MEDICINE and the Society.

With the re-introduction of the Society's student membership, the personal recruitment efforts of our members, for both regular and student members, is urged as the most effective method to apprise interested persons of the Society. Remember, one person — you — can make a big difference toward our goal of doubling the membership of the American Society of Law & Medicine in 1978.

the view that the lawyer "has a duty to tell his client when that client doesn't have a legitimate lawsuit, and indeed, [that] this is his first and foremost duty."

The expert witnesses produced by the defense, although agreeing that an attorney has an obligation to determine whether or not there is a reasonable basis for presenting a client's case to the courts, felt that the defendants had adequately done so. Verification of the client's resumé was not perceived of as a duty of the attorney, but rather, only something to be done if time permitted. As one expert for the defense testified: "If these lawyers decided to believe this lady and to interpret the doctor's written report to mean verification, they satisfied their responsibilities as lawyers." The defendants clearly believed that their obligation was to afford their client her day in court.[3] Although *Berlin v. Nathan* is currently on appeal, a California decision has held that an attorney has probable cause to represent a client in litigation, when he has an honest belief that the claim is tenable and proper. According to the court, the attorney must subjectively believe that the claim merits litigation, and that belief must satisfy the objective standard of the reasonable and prudent attorney.[4]

To Whom Do Attorneys Owe Duties?

Whatever the duties of attorneys, to whom are they owed, and to whom are attorneys accountable? Let us explore these points. The defendants' counsel and expert legal witnesses took the position that attorneys owe duties only to their clients, that attorneys need only conduct themselves according to their own self-imposed standards, and that attorneys are accountable only to their own consciences and clients. It is certainly true that in our adversarial system of justice, opposing attorneys have traditionally never considered themselves parties in the conflict, nor as owing any responsibility to their adversaries. As the sole interpreters and practitioners of the law, attorneys hold a unique position in our society, and the courts have mandated a standard of conduct which seeks to insure the rights and interests of the opposing party.[5] An individual who contemplates litigation relies on the attorney to determine whether a lawsuit should or should not be filed, and in the process of determining whether the aggrieved individual has a legitimate cause of action, does the attorney have a duty — any duty — to the potential defendant? If the lawyer advises his client to sue in a situation in which no reasonable and prudent lawyer would similarly advise his client, and if it is later shown that the filing of the lawsuit damaged the defendant, should not the defendant have a cause of action against the attorney?

While the answer is a resounding "yes" from the President of the Association of Trial Lawyers of America,[6] various state courts have given their authority to both sides of the question. In states where responsibility has been rejected as contrary to public policy, the rationale used by the courts has centered upon the restraining effect such a policy would have upon an attorney's representation of a client.[7] A California court has upheld the right of a defendant to sue opposing counsel, stating: "Attorneys cannot show a complete disregard for the rights of a prospective defendant. The law is to the contrary. . . . A cause of action for malicious prosecution exists if an attorney prosecutes a claim which a reasonable lawyer would not regard as tenable or proceeds with the action by unreasonably neglecting to investigate the facts and the law."[8] A Wisconsin court has held that the attorney's private duty to his client must yield to his public duty to aid the administration of justice where the two conflict.[9] Support for this viewpoint can also be found in the American Bar Association Code of Professional Responsibility which would have the attorney consider all persons involved in the legal process, avoid the infliction of needless harm, and refuse to file suit when he knows or should know that it would serve merely to harass or maliciously injure another.[10]

The argument has been made that if an attorney were liable in a civil lawsuit brought by an adversary, there would be a "chilling effect" on the right of the lawyer's client to his day in court — that the attorney might be dissuaded from bringing a legitimate claim. Although this argument has merit, are we not constantly balancing the conflicting rights and needs of all individuals? For example, we have the right of free speech but if for no reason we yell "fire" in a crowded theater, the right of others to maintain their safety must take precedence over our right of free speech. Accordingly, the recognition of one individual's rights frequently means the limitation of another's rights. In the same fashion, is it unreasonable to expect that the right of an individual to sue another, be balanced with the right of the other not to be sued without cause? A lawyer must not be required to advocate only cases which he knows will win; but perhaps, he should be expected to advocate only those cases which he, and other reasonable attorneys, believe to be legitimate and meritorious.

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