

Report from the Center for

PHILOSOPHY & PUBLIC POLICY

Volume 4, Number 1
Winter 1984

University of Maryland • College Park, Maryland 20742 • Telephone: 301-454-4103

The Zealous Lawyer: Is Winning the Only Thing?

To make its research readily available to a broad audience, the Center for Philosophy and Public Policy publishes a quarterly newsletter: *QQ—Report from the Center for Philosophy and Public Policy*. Named after the abbreviation for “questions,” *QQ* summarizes and supplements Center books and working papers and features other selected work on public policy questions. Articles in *QQ* are intended to advance philosophically informed debate on current policy choices; the views presented are not necessarily those of the Center or its sponsors.

In this issue:

American lawyers are charged with the duty of zealous advocacy on behalf of their clients—whatever the merits of the client’s cause. But does zealous advocacy advance truth or justice, or may it instead jeopardize the values our legal system is intended to protect and promote? p. 1

A research scientist blasts the double standard that treats air pollution more leniently when emitted from a lit cigarette than from a factory smokestack. p. 6

The explosion in new communications technology calls for a reexamination of the traditional justifications and requirements of freedom of the press. p. 9

QQ talks to Rev. J. Bryan Hehir, a Jesuit priest who combines theology and public policy in his influential work at the U.S. Catholic Conference. p. 12

A new volume in Maryland Studies in Public Philosophy is announced. p. 15

Famous football coaches have given us proverbs like “Winning’s not the best thing, it’s the only thing” and “Show me a good loser and I’ll show you a loser.” Sports fans are by and large not impressed by the putative distinction between winning and some other sense of “playing well” (as in the lame parental adage “It’s not whether you win or lose but how you play the game”). Playing the game better than the other team is precisely how you win and, more, the team that plays enough better than its opponents to score that extra point deserves to win. “May the better team win” is at some level a tautological wish universally granted, since winning can be thought of as defining the better team. Now, on any given occasion a generally excellent (i.e., winning) team may disgrace itself with sloppy, shoddy playing. But over time the best team will be the team that wins the most. Thus, Vince Lombardi and Woody Hayes have a point when they tell us that nothing else counts.

Lawyers within an adversary system of justice, such as ours, have been thoroughly schooled in the Lombardi-Hayes philosophy of competition. They are steeped in it in law school and held to its standards by their codes of professional obligation. For the cornerstone of the adversary system is the lawyer’s duty of zealous partisanship on behalf of his client. The ABA’s Code of Professional Responsibility dictates, “The duty of a lawyer, both to his client and to the legal system, is to represent his client zealously within the bounds of the law.” Murray L. Schwartz, professor of law at UCLA, explains the lawyer’s zeal in this way: