



Yes, No, or Maybe: The Importance of Developing a Philosophy of Lawyering in an Era of Immigration Upheaval

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A few years ago, a friend asked me to represent her on a DUI charge. I had never handled a criminal case, and I really didn't know where to begin. I asked some experienced colleagues for help, and they emphatically recommended a book by Bubba Head, one of the best DUI attorneys in the state of Georgia and possibly the United States. I bought the book and read it, and then asked follow-up questions of my colleagues. I asked one lawyer about the procedure that he used to test the equipment at the police station that measures blood alcohol content. The colleague laughed and said that nobody really did everything that Bubba recommended in his book. In what seemed to be his way of justifying the fact that he had never tested the electrical systems, etc. at the police station, he said that this would likely just make some people mad, namely the judge and the prosecutor, and ultimately hurt not only this client, but also my reputation and thus future clients. And further, local lawyers could not charge the fees that Bubba was rumored to have charged so it was not economical to put in this level of time and effort. Though the book was universally recommended by colleagues, they apparently did not intend for me to follow Bubba's advice *that* closely.

This raises a number of issues that are also applicable in the immigration context, particularly in immigration court. In this era of immigration upheaval, lawyers need to know how far they *can* go and how far they *should* go in representing their



clients. In this writing, I will argue that the answer lies not only in the applicable ethics rules and laws, but also resides within each individual lawyer.

The ethics rules require that we diligently and competently represent our clients, relegating the “zealousness” language to the comments and the preamble.¹ (The preamble to the federal rules does, however, state that nothing in those rules is intended to relieve the lawyer of her duty to zealously represent her client.²) Without the express requirement of zealousness, perhaps the first question we should ask is whether an immigration lawyer *should* represent her client with zeal. Professor Elizabeth Keyes, in her salient article, *Zealous Advocacy: Pushing the Borders in Immigration Litigation*,³ answers the question with a resounding “yes” when it comes to clients in immigration court proceedings. She argues that the odds are stacked against the immigrant, and zealous representation is one of the few things we can do to make sure that justice is done. But other lawyers may disagree with this “client-centered” approach, espousing a different “philosophy of lawyering,” or more specifically, “philosophy of practice.”⁴ Professor Nathan Crystal, in his groundbreaking work, *Developing a Philosophy of Lawyering*,⁵ delineates several different philosophies of practice that a lawyer may adopt. Professor Keyes’ philosophy of practice would clearly fall within the category of what I believe Professor Crystal would call “client-centered.”⁶ While it is doubtful that most lawyers practice in a “client-centered” way,⁷ I firmly believe that that is the aim for most of us in the profession. I would also guess that most lawyers feel that this is in fact the *only* way there is to practice—as a “client-centered,” “hired gun.” With this as the only acceptable goal, lawyers can become overwrought with guilt and dissatisfaction for falling short. But in fact, the ethics rules give us a lot of latitude. By developing a philosophy of lawyering, lawyers can—within the scope of applicable laws and ethics rules—define for themselves a way of practicing law that is consistent with their long-term vision for their lives and their values. This will lead to increased contentment among lawyers within the profession, with the ensuing benefits passed along to clients. And clients will benefit as well by receiving clear articulations of lawyers’ philosophy of practice so that they can make informed decisions about which lawyer to hire. In fact, Professor Crystal argues that such disclosure should be required.⁸ The goal of this writing is to briefly introduce lawyers to the concept of a philosophy of practice, to illustrate by way of example how various philosophies might play out in immigration practice, and to demonstrate the benefit to both lawyers and clients of such an organized approach to discretionary decisions within the practice of law.

Professor Crystal delineates philosophy of practice into four main categories: a self-interested philosophy of lawyering, a morality-based philosophy of lawyering, a philosophy of lawyering centered around institutional values, and a philosophy of lawyering that is client-centered.⁹ The range of various philosophies of practice is broad and the subject of a great deal of legal scholarship.¹⁰ Additionally, one’s philosophy of practice need not fit neatly into one of the categories, but may instead be

1 See generally ABA Model Rules of Professional Conduct. The word “zealous” does not appear in the text of the rules.

2 “Nothing in this regulation should be read to denigrate the practitioner’s duty to represent zealously his or her client within the bounds of the law.” 8 CFR 1003.102.

3 Keyes, Elizabeth (2015) “Zealous Advocacy: Pushing Against the Borders in Immigration Litigation,” *Seton Hall Law Review*: Vol. 45 : Iss. 2 , Article 3. Available at: <http://scholarship.shu.edu/shlr/vol45/iss2/3>.

4 The concept of “philosophy of lawyering” is broad and encompasses a lawyer’s work/life balance, involvement in the development of the profession, and the practice of law itself. See generally Nathan M. Crystal, *Using the Concept of a “Philosophy of Lawyering” in Teaching Professional Responsibility* (2007) 51 St. Louis U.L.J. 1235 (2007). This article focuses on the latter, what Professor Crystal calls “philosophy of practice,” defining it as “that part of a lawyer’s overall ‘philosophy of lawyering’ that focuses on a lawyer’s philosophy in making discretionary decisions in the practice dimension.” *Id.* at 1241.

5 Nathan M. Crystal, *Developing a Philosophy of Lawyering*, 14 NOTRE DAME J.L. ETHICS & PUB. POL’Y 75 (2000).

6 Nathan M. Crystal, *Using the Concept of a ‘Philosophy of Lawyering’ in Teaching Professional Responsibility* (2007) 51 St. Louis U.L.J. 1235 at 1245.

7 Professor Crystal notes that “[s]ome empirical studies (although limited in number and scope) of the behavior of criminal defense lawyers, lawyers in small communities, lawyers in nonlitigation activities, and lawyers in large law firms cast doubt on the claim that neutral partisanship accurately describes the conduct of most lawyers. Indeed, some of these studies suggest that the problem with the way lawyers conceive of their role is the opposite of neutral partisanship; lawyers are not sufficiently zealous in representing their clients because they are concerned about protecting their reputations, preserving relationships with other lawyers, judges, or officials, or advancing their own interests.” Nathan M. Crystal, *Developing a Philosophy of Lawyering*, 14 NOTRE DAME J.L. ETHICS & PUB. POL’Y 75, 88 (2000).

8 Professor Crystal states that “[c]lients...are entitled to more than word of mouth or the luck of the draw. Clients are entitled to receive from their lawyers a clear expression of the lawyer’s philosophy of representation.” Nathan M. Crystal, *Developing a Philosophy of Lawyering*, 14 NOTRE DAME J.L. ETHICS & PUB. POL’Y 75, 94 (2000).

9 Nathan M. Crystal (2007) 51 St. Louis U.L.J. 1235 at 1245 (Chart 3).

10 See Nathan M. Crystal (2007) 51 St. Louis U.L.J. 1235 at 1251.



a complex combination of various aspects of each.¹¹ This brief hypothetical will help illustrate how a philosophy of practice may influence a lawyer's decisions in real life.

Hypothetical

In order to show contrast among various philosophies of practice, including the client-centered approach advocated by Professor Keyes, I will use a question she addresses in her article: "Have you EVER committed a crime or offense for which you have not been arrested?"¹² Assume that, while completing Form I-918 for a client who is in removal proceedings, he reveals to a lawyer that he has committed several crimes. He admits to stealing a watch on his 18th birthday and he tells the lawyer that he frequently jaywalks. He further states that his lawyer must, of course, keep these facts a secret. The I-918 petition for U status is the only defense the client has in removal proceedings. With this brief example, I will begin by analyzing how a self-interested philosophy of practice might look in the immigration context.

A Self-Interested Philosophy of Lawyering

After careful consideration, lawyers might decide that they will generally exercise any discretion they may have in favor of themselves.¹³ To avoid potential ethical entanglements, the lawyer follows a self-interested approach to discretionary decision-making. He tells the client that he cannot proceed without disclosing these offenses on the I-918. He further tells the client that he must conduct research to determine whether stealing the watch was in fact a crime involving moral turpitude and whether it is subject to the petty offense exception under INA § 212(a)(2)(A)(ii)(II). The self-interested lawyer charges a high, but reasonable, hourly rate and tells that client that this will cause the legal fee to increase substantially. If the petty offense exception applies, then the client will then have to disclose the shoplifting offense on his I-918 and the lawyer will draft a brief to USCIS explaining how the petty offense exception applies, again adding to the already substantial legal fee. The self-interested lawyer might then explain that other lawyers disagree with the duty to disclose prior offenses and that the client is free to seek the opinions of other lawyers.¹⁴

While such an approach may seem absurd and extremely prejudicial to the client at first, a closer look may reveal that this actually benefits the client in the long run. If the petty offense exception does apply, then the client could disclose the shoplifting (and perhaps include some general statement that says he jaywalks on a regular basis and cannot recall every offense). If the petty offense exception does not apply, then a waiver could be filed. Perhaps there is a small chance that someone witnessed him shoplifting or that he bragged to his friends about doing so. If the client is successful with his petition, he would never again have to worry about his failure to disclose. If one of these people contacted USCIS to report the shoplifting or perhaps turned the client in to local authorities, this would not give rise to his losing his status and once again facing proceedings.¹⁵

¹¹ See Nathan M. Crystal (2007) 51 *St. Louis U.L.J.* 1235 at 1245.

¹² See Keyes, Elizabeth (2015) "Zealous Advocacy: Pushing Against the Borders in Immigration Litigation," *Seton Hall Law Review*: Vol. 45 : Iss. 2, Article 3 at 532 quoting I-918, Petition for U Nonimmigrant Status, at 3, U.S. Citizenship and Immigration Services, available at <http://www.uscis.gov/i-918> (last visited Feb. 28, 2015).

¹³ See Nathan M. Crystal (2007) 51 *St. Louis U.L.J.* 1235 at 1244, 1245.

¹⁴ ABA Model Rule 1.3 requires the lawyer to act with "reasonable diligence and promptness," and Comment 1 says the "lawyer must...act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf." But the comment further states that a "lawyer is not bound, however, to press for every advantage that might be realized for a client."

¹⁵ The disclosure per se may lead to criminal charges being initiated. As this is a serious consequence under criminal law, it may be wise to insist that the client consult with criminal defense counsel if this is beyond the scope of the lawyer's engagement.



If the client insisted on not revealing the shoplifting on his application, the immigration lawyer might seek leave to withdraw from the case, citing a breakdown in the lawyer/client relationship. In the event that the judge were to deny the motion, the lawyer would have no choice but to continue with the representation pursuant to ABA Model Rule 1.16 and applicable federal rules. As the I-918 is filed with USCIS, it might be possible for the lawyer to limit the scope of his representation and insist that the client hire separate counsel for the U petition, but this would nonetheless require substantial cooperation of the client.

The self-interested lawyer would be unlikely to propose checking the “no” box on Form I-918 as this may increase the risk of violating ABA Rule 4.1 or 3.3.¹⁶ Furthermore, an “overzealous” prosecutor might even seek criminal charges against a lawyer pursuing this option, making this an even more unlikely choice for the lawyer who has adopted this philosophy of practice.¹⁷

A Morality-Based Philosophy of Lawyering

Under a morality-based philosophy of lawyering, “lawyers are morally accountable for the actions that they take on behalf of their clients and must be prepared to defend the morality of what they do.”¹⁸ Under this philosophy, lawyers cannot claim that they are merely a “hired gun” and that they are not morally responsible for their actions so long as they comply with laws and ethics rules. Of course, one problem with a morality-based philosophy of lawyering is that moral values are subjective.¹⁹ This problem also makes it more difficult to demonstrate how this rule might apply. Honesty would be a moral value that presumably all lawyers would consider important, but their interpretation of the technical aspects of the I-918 question under discussion may vary. In our example involving the I-918, one lawyer may interpret their duty of honesty, based upon religious or moral values, to require him to either withdraw from the case or convince the client to proceed checking the “yes” box. Another might value honesty as much as the first, but interpret this differently within the context of his overall obligation to serve his client and the technical interpretation of the question. Assume that his client is from Honduras. The lawyer might consider his obligation to interpret any gray area in favor of his client, given the risk that his client might otherwise face returning to Honduras—a small country where he would face grave danger—in the future. The lawyer may be concerned that his client stole an expensive watch and committed a crime that is not covered under the petty offense exception, is punishable by at least a year in jail, and therefore is subject to a waiver for which there is no guarantee of approval. The lawyer might consider the Judeo-Christian value of welcoming the stranger to compel him to interpret the gray area in favor of helping his client remain here and avoid the suffering he would face in Honduras. As justification for his action, he might interpret the question on the I-918 as overly broad, unfair, and decide that honesty does not require checking the “yes” box. (A detailed discussion to follow under the “client-centered” section.)

¹⁶ The lack of clarity as to whether Rule 3.3 or 4.1 applies in this situation provides another good example for analysis of philosophy of practice. Beyond the clarity provided by the plain meaning of the definition of tribunal in the ABA Model Rules, the NYSBA makes a strong argument in Opinion 1011 that service centers and field offices are not tribunals. However, the opinion cites several court opinions that have reached contrary conclusions. The opinion points out that, in each case cited, either the lawyer did not dispute the issue or the court provided no explanation as to why it reached its conclusion. Even Hazard & Hodes state, “without citing authority, ‘Rule 3.3(d) applies to such matters as applications before the Patent Office and other ex parte presentations’.” NYSBA Opinion 1011 (quoting Hazard & Hodes, *The Law of Lawyering* § 29.3, at 29-7 (2007 Supp.)). It is likely that the client-centered lawyer would consider Rule 4.1 to apply when there is a lack of clarity as to whether a previous statement need be corrected. The self-interested lawyer would be more likely to err on the side of considering service centers “tribunals” for purposes of Rule 3.3.

¹⁷ Cyrus Mehta, *Crime Without Punishment: Have You Ever Committed A Crime For Which You Have Not Been Arrested?*, at <http://blog.cyrusmehta.com/CyrusMehta/wp-content/uploads/wp-post-to-pdf-enhanced-cache/2/crime-without-punishment-have-you-ever-committed-a-crime-for-which-you-have-not-been-arrested.pdf>.

¹⁸ Nathan M. Crystal, *Using the Concept of a ‘Philosophy of Lawyering’ in Teaching Professional Responsibility* (2007) 51 *St. Louis U.L.J.* 1235 at 1242.

¹⁹ Nathan M. Crystal, *Developing a Philosophy of Lawyering*, 14 *NOTRE DAME J.L. ETHICS & PUB. POL’Y* 75, 90 (2000).



An Institutional Values-Based Philosophy of Lawyering

Those concerned about the subjective nature of a “philosophy of morality” might instead choose a “philosophy of institutional value.” There are many complex theories espoused by ethics scholars, and a detailed analysis of each is beyond the scope of this writing.²⁰ For illustrative purposes, I will use Professor Crystal’s more general definition of a “philosophy of institutional values” as “approaches based on social or professional values or norms rather than principles of morality.”²¹ In this case, a lawyer might argue that, after long and deliberate consideration, the law has been drafted to take crimes involving moral turpitude seriously. Federal regulations give form instructions great weight, and this would presumably extend to answering every question on the forms.²² Though regulations are not passed by elected officials, they are promulgated after notice to and comment by the public. He might then decide that it makes sense that the lawyer’s own moral views are subjugated to those of the state.²³ He might decide that the question should be answered in the affirmative in our example because the shoplifting offense is clearly the kind of thing the drafters were looking for.²⁴ In Professor Keyes’ words, “[p]erhaps answering yes shows respect or even some awe for the legal system, the same system that drew the lawyer into the profession in the first place.”²⁵

A lawyer who follows an institutional values-based philosophy would likely have faith in “the system,” believing that the laws and courts are essentially fair and just. A lawyer who finds our current laws and court system to be deeply flawed and in need of dramatic change would be less likely to choose such a philosophy. On the other hand, a lawyer might express his views that the system needs change (and even work toward making the change happen) while at the same time believing that in gray areas his personal code of ethics must give way to institutional values until such change occurs. To give an analogous political example to illustrate the point more clearly, it is widely known that John McCain has sometimes voted to confirm certain Presidential nominees who he would not have chosen personally and who might work against some of the laws and policies he believes to be important. Citing the maxim that “Elections have consequences,” he might vote to confirm such a candidate so long as he or she is competent.

A Client-Centered Philosophy of Practice

Using a client-centered philosophy of practice, the lawyer would “take any action that will advance the client’s interest so long as the action does not clearly violate a rule of ethics or other law (the principle of professionalism).”²⁶ Professor Keyes argues forcefully that such a philosophy be adopted by all immigration court lawyers, given the gravity of the matters before the tribunal and the unfairness under current regulations and laws.²⁷ With regard to answering in the affirmative on the broad question posed on the I-918, she argues that “the defensible path of saying ‘no’ even when possibly the truth is ‘yes,’ is

20 For an overview of some important philosophies of institutional values, see Nathan M. Crystal, “*Using the Concept of a ‘Philosophy of Lawyering’ in Teaching Professional Responsibility*” (2007) 51 *St. Louis U.L.J.* 1235 at 1242-1244.

21 Professor Crystal notes that “philosophies of morality and institutional values are not inconsistent because institutional values often embody moral principles.” Nathan M. Crystal, *Using the Concept of a ‘Philosophy of Lawyering’ in Teaching Professional Responsibility* (2007) 51 *St. Louis U.L.J.* 1242, 1243.

22 See 8 CFR 103.2(a).

23 Perhaps this line of thinking most closely aligns with Professor Brad Wendell’s philosophy of lawyering briefly outlined by Professor Crystal. Nathan M. Crystal, *Using the Concept of a ‘Philosophy of Lawyering’ in Teaching Professional Responsibility* (2007) 51 *St. Louis U.L.J.* 1243, 1244.

24 The drafters of the form are apparently fishing for an admission under INA § 212(a)(2)(A)(i), though certain responses may lead an officer to believe the client is a “drug abuser or addict” under INA §212(a)(1)(A) or give them “reason to believe” that the client “is or has been an illicit trafficker in any controlled substance...” under INA §212(a)(2)(C)(i).

25 Keyes, Elizabeth (2015) “Zealous Advocacy: Pushing Against the Borders in Immigration Litigation,” *Seton Hall Law Review*: Vol. 45 : Iss. 2 , Article 3 at 533.

26 Nathan M. Crystal, *Using the Concept of a ‘Philosophy of Lawyering’ in Teaching Professional Responsibility* (2007) 51 *St. Louis U.L.J.* 1241.

27 See generally Keyes, Elizabeth (2015) “Zealous Advocacy: Pushing Against the Borders in Immigration Litigation,” *Seton Hall Law Review*: Vol. 45 : Iss. 2 , Article 3 at 532, FN 268.



a choice made by the zealous advocate.”²⁸ But she admits that “for the risk-averse among us, this choice comes dangerously close to a collision with duties to the legal system.”²⁹ As immigration lawyer and ethicist Cyrus Mehta points out in his article on the subject in the negative could lead to problems with “an overzealous prosecutor or bar investigator,” but he also provides an in-depth illustration of just how complicated and unclear the matter really is.³⁰ The Board of Immigration Appeals (BIA) has held that “a valid admission of a crime for immigration purposes requires that the alien be given an adequate definition of the crime, including all essential elements, and that it be explained in understandable terms.”³¹ The argument that some make is unless the client has been presented with the law under these terms, he or she cannot possibly answer the question in the affirmative. This might then lead one to the conclusion that in practice only a criminal defense lawyer might be required to check “yes,” as only they would know all the essential elements of the crime. But there might exist the rare circumstance in which an individual might have officially made a previous admission before a government official, thereby satisfying these requirements and necessitating an affirmative answer. And a lawyer might further argue that if this question were to be interpreted as a broad “catch all,” then virtually everyone would have to check the “yes” box. The lawyer could argue that the government must be aware that most lawyers and foreign nationals who prepare these forms do not interpret the forms in this broad manner. Otherwise, nearly everyone—almost certainly those who drive automobiles—would be answering “yes” to the question and explaining that they have broken traffic laws (often misdemeanors under state law) countless times and have possibly committed other crimes that they were not even aware of. Perhaps the most compelling argument of all in the context is that “guilt” with respect to a particular crime is a legal term. Checking the “yes” box when a client has not been convicted according to INA Section 101(a)(48)(A) essentially involves the client’s own lawyer assuming the role of both judge and jury with respect to the conduct in question.³² Furthermore, checking the “yes” box could lead to fundamentally unfair results for those who were never charged with a crime. Assume the client checks the “yes” box, though his conduct was never called into question by authorities. This might then lead to further inquiry by immigration officials and an official admission under INA 212(a)(2), ultimately resulting in a finding that he is “inadmissible” under immigration law. Another client who has done the same thing is charged with shoplifting, which ultimately results in “pre-trial intervention” (PTI). The client makes no formal admission, completes a program under state law that allows him to avoid jail time, and avoids a final disposition that qualifies as a conviction under INA 212(a)(2). He checks the “no” box to the “Have you ever committed a crime or offense...” question and provides a copy of the certified original disposition showing successful completion of PTI in response to another question on the form, asking whether he has ever been arrested or charged with a crime. No further questions are asked of this client, and he is not found inadmissible. This provides strong support for the lawyer who checks the “no” box in our hypothetical situation, but serious risks remain, which is why this option would likely only be selected by the client-centered lawyer.

The self-interested lawyer works to minimize his personal risk and prioritizes himself when representing his client. The morality-based lawyer prioritizes her personal ethical system. The lawyer who adopts an institutional values approach prioritizes the broader ethical system of the whole over that of the individual. But the truly client-centered lawyer prioritizes the client above all else.

28 Keyes, Elizabeth (2015) “Zealous Advocacy: Pushing Against the Borders in Immigration Litigation,” *Seton Hall Law Review*: Vol. 45 : Iss. 2 , Article 3 at 533.

29 Keyes, Elizabeth (2015) “Zealous Advocacy: Pushing Against the Borders in Immigration Litigation,” *Seton Hall Law Review*: Vol. 45 : Iss. 2 , Article 3 at 533.

30 Cyrus Mehta, *Crime Without Punishment: Have You Ever Committed A Crime For Which You Have Not Been Arrested?*, at <http://blog.cyrusmehta.com/CyrusMehta/wp-content/uploads/wp-post-to-pdf-enhanced-cache/2/crime-without-punishment-have-you-ever-committed-a-crime-for-which-you-have-not-been-arrested.pdf> (last accessed July 5, 2017).

31 Matter of K, 7 I&N Dec. 594 (BIA 1957).

32 See Keyes, Elizabeth (2015) “Zealous Advocacy: Pushing Against the Borders in Immigration Litigation,” *Seton Hall Law Review*: Vol. 45 : Iss. 2 , Article 3 at 532.



Developing Your Own Philosophy of Practice

Every lawyer should formally draft her or his own philosophy of practice.³³ You have a philosophy of lawyering whether you are aware of it or not.³⁴ If you are not aware of it, then your clients probably do not know what it is either. Develop a written philosophy and hone it through time. This allows you to clarify your thoughts and can be an invaluable guide when making difficult decisions. Professor Crystal makes several suggestions as to how lawyers might provide their philosophy of lawyering to clients. I strongly support lawyers providing a philosophy of practice (or better yet, their more comprehensive philosophy of lawyering) to their clients because this allows the client to make an informed decision about who to hire, but I stop short of suggesting this as a requirement. A lawyer's website would be the ideal place to post this and reference to it in the engagement letter would be a good idea.³⁵ While it would seem likely that a client would only choose a lawyer with a client-centered practice, there are plenty of examples in which a client might prefer a different kind of lawyer. An evangelical Christian might choose a lawyer who makes her discretionary decisions based upon the guiding principles of her religion. A lawyer who espouses a philosophy of practice based in institutional values might, out of respect for the rule of law, develop a deep understanding of her field of practice and thus provide outstanding legal representation to her clients. And a client might choose to hire a lawyer despite her having a more of a self-interested philosophy of practice, provided she has stellar track record of success.

Lawyers also benefit from having a philosophy of practice. It is this lawyer's opinion that many lawyers are unhappy with their work because they are not living in a manner that is consistent with their vision and values. Developing a written philosophy of lawyering can help the lawyer along the path to greater career satisfaction. Those who work as employees may decide to quit their job and work someplace else or start their own firms. Others might decide to change the way they practice. And as immigration lawyers face increasingly more difficult ethical decisions, a formal, written philosophy of practice can serve as the bedrock upon which these decisions are made. The hypothetical in this article provides one such example.

Immigration lawyers should not only know the immigration laws, but also the criminal statutes that could possibly affect their clients and them.³⁶ And to effectively represent our clients, we must know the ethics rules inside and out. Put another way, every lawyer should be an expert in the Rules of Professional Conduct, including the comments thereto. Lawyers must be keenly aware of the rules that do not allow for discretion,³⁷ and they must exercise clear and sound judgment as to the boundaries of discretion.³⁸ Now more than ever, lawyers need a set policy to guide them in discretionary matters, and clients deserve to know how their lawyers will handle these issues before hiring the lawyer. Developing a formal philosophy of practice is a way to achieve this.

³³ See Nathan Crystal's articles on the subject.

³⁴ "Because discretion is so pervasive in the practice of law, lawyers develop, either thoughtfully or haphazardly, a general approach for making these decisions." *Developing a Philosophy of Lawyering*, 14 Notre Dame J.L. Ethics & Pub. Pol'y 75, 75 (2000).

³⁵ See *Developing a Philosophy of Lawyering*, 14 NOTRE DAME J.L. ETHICS & PUB. POL'Y 75, 97 (2000).

³⁶ Cyrus D. Mehta and Alan Goldfarb, *Up Against a Wall: Post-Election Ethical Challenges for Immigration Lawyers*, Jan. 11, 2017, (AILA Doc. No. 17011200).

³⁷ For example, a lawyer may not charge a contingency fee in a criminal case or certain family law matters. See Rule 1.5(d).

³⁸ See, for example, the reasonableness requirements of ABA Model Rule 1.7.