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Norms of advocacy

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ABSTRACT: This essay advances an account of the ordinary speech activity of advocating. The ethical principles developed within advocacy professions such as law and public relations show that advocates are not just out to persuade. Instead, they undertake obligations to make the best case for their positions while also maintaining the integrity of the communication systems within which they operate. While not offering full justifications, advocates nevertheless help auditors by making conspicuous the outer bounds of the arguable.

KEYWORDS: argument, argumentation, advocacy, ethics of argumentation, normative pragmatics, professional ethics

1. INTRODUCTION

My goal in this paper is to give a preliminary account of the norms of the ordinary activity of advocating. This topic is worth the attention of argumentation theorists because of a puzzle, and because of a gap.

The puzzle arises first from the radically different treatments advocacy receives in the pedagogies of two of the major disciplines contributing to contemporary argumentation studies. For scholars of argumentation working in Communication traditions, advocacy is seen as a good thing. The name of our leading journal is *Argumentation & Advocacy*, one of our leading textbooks is called *Advocacy and Opposition* (Rybacki & Rybacki, 2008), and many of our other textbooks use the term "advocate" as a virtual synonym for "arguer," to capture the role we invite students to take. Hollihan and Baaske, for example, tell their readers that "your task as an advocate is to create the best arguments that you can" (2005, p. 79). By contrast, for scholars of argumentation working in the tradition of Informal Logic, students are invited to be the auditors of what reasonably can be called advocacy, and one of the aims of instruction is to arm them against it. As Johnson and Blair put it in their aptly named *Logical Self-Defense*,

> Groups and individuals are incessantly vying for our support for their way of seeing things, for our acceptance of their views of what is true, important, or worth doing. The list of topics varies; the point is that we are consumers of beliefs and values as well as products. An important question thus emerges: How good are our buying habits? Some arguments are damaged goods. Buying a bad argument can, depending

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> on the situation, do a person more harm than buying a defective CD player (1994, p. 1).

Both scholarly traditions agree that advocacy is one of the major contexts in which arguments are apt to be found. But while one endorses it, apparently finding it normatively good, the other is suspicious of it, suggesting that it is normatively bad. Who is right?

The obvious third possibility—that advocacy is simply neutral—turns up in argumentation theory as well, adding another layer of complexity to the puzzle. Although Walton in *The New Dialectic* (1998) does not develop a conception of advocacy, he does use the term repeatedly in ways that suggest that for him, advocacy is primarily an attempt to persuade. "A sales pitch to sell or promote a product" is a prototypical example of advocacy, "whose purpose is to convince viewers to buy the product by presenting overwhelming arguments." In advocating "each party argues for and supports his own point of view as strongly as possible," aiming "to successfully advocate one side of a disputed issue," i.e., to persuade or win (Walton, 1998, pp. 215, 209-210, 122, 271). Advocacy as persuasion has itself no normative spin, but takes its coloration from its context. In "persuasion dialogues," advocacy can be a good thing because it promotes the collective goal of coming to a consensus or mutual understanding; in "information-seeking dialogues," by contrast, advocacy will be taken as biased, irrelevant and possibly even fallacious.

How advocacy can be at once good, bad, and neutral is the puzzle. The gap is that as far as I can find, no one has developed a conception of advocacy that might help untangle the puzzle. Both in our pedagogy and in our theorizing, argumentation scholars appear to be relying on commonsense assumptions about what it means to advocate. In this paper, therefore, I aim to bring these assumptions out into the open.

Adopting an empirical approach. I presume that skilled advocates already know what normatively good advocacy is, at least in the sense of an implicit, practical "know-how." Following Robert Craig (1989, 1996, 1995), I take it that one goal of theorizing is to make this implicit practical knowledge more explicit, as a first step towards putting it in order, grounding it on more basic principles, critiquing its limitations, and possibly improving it. So I will look to two communities of good advocates to begin developing a clearer conception of the norms of advocacy: lawyers, and public relations professionals. Both professions (as we will see) count advocacy among their central activities. Both face suspicions from the general public—both encounter resistance to their self-assertions of normative respectability. Both therefore have engaged in significant self-reflection, and articulated for themselves a variety of principles, rules, obligations, duties, best practices, ideals and so on in documents that I'll lump together and call "ethics statements." These statements are a particularly reliable source for evidence of the norms of advocacy, because they have to re-assure critical public audiences of the professions' integrity, while also laying out norms that advocacy professionals can in practice follow. They have to be both normatively sound and practically useful—just what we need to get clear about the norms of the ordinary activity of

advocating. (Note that I largely ignore here the scholarly literature on ethics developed in both fields, since it is farther from the edge where theory and practice meet.)

In the following sections, I analyze each community's ethics statements in turn, establishing that there are norms of advocacy and detailing the fairly fine-grained set of obligations that each community puts forward. In the final sections, I close by generalizing a preliminary account of the normative structure of the ordinary activity of advocating, and by exploring the implications of this model for argumentation theory more generally.

2. NORMS OF ADVOCACY AMONG THE LAWYERS

The current American Bar Association Model Rules of Professional Conduct—the basis for the rules of professional conduct in most US jurisdictions—recognize that lawyers play multiple roles: they serve not only advocates, but also advisors, negotiators and "neutrals" (e.g., mediators). As is to be expected in a principal/agent relationship, the overall standard of performance in any of these roles is "diligence" (Rule 1.3). "A lawyer," the Comment on the Rule reads, "should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor."

What then must an *advocate* in particular do to be diligent? The Preamble to the Rules defines it thus: "As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system." Notice first that this standard places advocacy in the particular context of "the adversary system": paradigmatically, a criminal trial, but also civil trials and by extension other adjudicative processes where open disputation is expected. Notice second that this standard pulls in two directions: an advocate owes "zeal" to her client, but is also constrained ("under") by her role within the "system" in which she operates. This same tension turns up in the other places where the Rules talk of advocacy:

> The advocate has a duty to use legal procedure for the fullest benefit of the client's cause, but also a duty not to abuse legal procedure (Rule 3.1 Comment).
> A lawyer acting as an advocate in an adjudicative proceeding has an obligation to present the client's case with persuasive force. Performance of that duty while maintaining confidences of the client, however, is qualified by the advocate's duty of candor to the tribunal (Rule 3.3 Comment).

These statements echo the more embroidered language of the earliest set of official provisions, the 1908 Canons:

> Canon 15: How Far a Lawyer May Go in Supporting a Client's Cause....The lawyer owes entire devotion to the interest of the client, warm zeal in the maintenance and defense of his rights and the exertion of his utmost learning and ability, to the end that nothing be taken or be withheld from him, save by the rules of law, legally applied. No fear of judicial disfavor or public unpopularity should restrain him from the full discharge of his duty. In the judicial forum the client is entitled to the benefit of any and every remedy and defense that is authorized by the law of the land, and

> he may expect his lawyer to assert every such remedy or defense. But it is steadfastly to be borne in the mind that the great trust of the lawyer is to be performed within and not without the bounds of the law. The office of attorney does not permit, much less does it demand of him for any client, violation of law or any manner of fraud or chicane. He must obey his own conscience and not that of his client.

The 1969 ABA Code of Professional Responsibility was more straightforward, stating as black letter law the principle "A Lawyer Should Represent a Client Zealously Within the Bounds of the Law" (Canon 7).

The current Rules attempted to de-emphasize zeal by taking the word out of the rules themselves, reserving it only for the comments. But as the Preamble to the Rules discusses at length, the central dilemma between an advocate's duties of *zeal* for the client and *restraint* for the system remains. The Preamble starts with the hopeful proposition that "a lawyer's responsibilities as a representative of clients, an officer of the legal system and a public citizen are usually harmonious. Thus, when an opposing party is well represented, a lawyer can be a zealous advocate on behalf of a client and at the same time assume that justice is being done." But the Preamble then continues on a less hopeful note:

> In the nature of law practice, however, conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from conflict between a lawyer's responsibilities to clients, to the legal system and to the lawyer's own interest in remaining an ethical person while earning a satisfactory living. The Rules of Professional Conduct often prescribe terms for resolving such conflicts. Within the framework of these Rules, however, many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the Rules. These principles include the lawyer's obligation zealously to protect and pursue a client's legitimate interests, within the bounds of the law, while maintaining a professional, courteous and civil attitude toward all persons involved in the legal system.

In the following, I examine first the lawyer's duty of zeal, and then the specific limitations placed on it by the "bounds of the law."

The various legal ethics statements leave "zeal" undefined, suggesting that the cultural model of a "zealous advocate" is so well established as to not need much discussion. In the passages cited above, "zeal" is associated with activity that benefits a client, and in particular communicative activities: the zealous lawyer "asserts the client's position," "assert[s]...remed[ies] or defense[s]," and "present[s] the client's case with persuasive force."

The limits imposed on zeal, by contrast, are treated much more explicitly. For one thing, a lawyer must confine her communication to the adversary proceeding itself, and within the proceeding, to communicative methods that are appropriate:

> A lawyer shall not: (a) seek to influence a judge, juror, prospective juror or other official by means prohibited by law; (b) communicate ex parte with such a person during the proceeding unless authorized to do so by law or court order;...(d) engage in conduct intended to disrupt a tribunal (Rule 3.5).

> A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter (Rule 3.6).

These rules bar the lawyer from achieving her client's goals by illicit, non-communicative methods like bribing, intimidating or harassing any of the other key participants in the courtroom setting: the potential or actual jurors (who judge the facts), the judge (who judges the law), or the witnesses. They also bar the lawyer from communicative approaches made outside of the courtroom setting, either through communication with the general public or through private, one-on-one "ex parte" communication with the other key participants. As the Comment to Rule 3.6 explains, this provision is necessary to "preserv[e] the right to a fair trial," since "if there were no such limits, the result would be the practical nullification of the protective effect of the rules of forensic decorum and the exclusionary rules of evidence." Similarly, the obligation to refrain "from abusive or obstreperous conduct" in the courtroom "is a corollary of the advocate's right to speak on behalf of litigants" there (Rule 3.5 Comment). The former 1968 Code likewise explained these restrictions as required to preserve the integrity of institutions within which the lawyer is advocating. "In the final analysis," the Code reasoned, "proper functioning of the adversary system depends upon cooperation between lawyers and tribunals in utilizing procedures which will preserve the impartiality of tribunals and make their decisional processes prompt and just." Thus these rules obligate the lawyer not to proceed in ways that would destroy the adversary system that allows her room to advocate at all.

An even more detailed set of rules govern the communicative means that the lawyer is allowed to deploy within the adversary proceeding. Most stringent is an absolute prohibition against making statements known to be false, or helping others make them:

> Rule 3.3 Candor Toward The Tribunal. (a) A lawyer shall not knowingly: (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;...(3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.
> Rule 3.4 Fairness to Opposing Party and Counsel: A lawyer shall not...(b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law.

The rationale given in the Comments to these Rules again stresses the lawyer's obligation "to avoid conduct that undermines the integrity of the adjudicative process" (Rule 3.3 Comment). "Destruction or concealment of evidence," for example, blocks the basic "procedure of the adversary system" which "contemplates that the evidence in a case is to be marshaled competitively by the contending parties" (Rule 3.4 Comment).

Avoiding known falsehood still leaves scope for presenting less than known truth, however. As the Comment to Rule 3.3 puts it, "The prohibition against offering false evidence only applies if the lawyer knows that the evidence is false. A lawyer's reasonable belief that evidence is false does not preclude its presentation to the trier of fact." (Indeed, "a lawyer should resolve doubts about the veracity of testimony or other evidence in favor of the client.") Within this broad terrain of non-known-falsehood, the ethical rules require lawyers to have at least some backing for what they say. For example, a lawyer can raise any issue—including an argument for overturning current law—as long as "there is a basis in law and fact...that is not frivolous" (Rule 3.1). The Comment explains:

> Such action is not frivolous even though the lawyer believes that the client's position ultimately will not prevail. The action is frivolous, however, if the lawyer is unable either to make a good faith argument on the merits of the action taken or to support the action taken by a good faith argument for an extension, modification or reversal of existing law.

Similarly, in making arguments, "a lawyer shall not...allude to any matter...that will not be supported by admissible evidence" (Rule 3.4). Note that this Rule does not require a lawyer to actually believe the evidence ("a lawyer in an adversary proceeding is not required...to vouch for the evidence submitted in a cause," Rule 3.3 Comment); it merely requires her to base her arguments only on (non-known-to-be-false) evidence that could be admitted.

Finally, in two specific cases the lawyer is affirmatively required to present matters known to be true, even if they are adverse to her client's interests:

> A lawyer shall not knowingly:....(2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; ...(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse (Rule 3.3).

The first of these obligations is, amusingly enough, an obligation of veracity the lawyer owes to her fellow lawyer, the judge. The Comment characterizes suppression of known legal provisions as a scandalous "dishonesty toward the tribunal." The second obligation is imposed only when an adversary proceeding—the presumed ordinary context of advocacy—is not present, so "there is no balance of presentation by opposing advocates." In both cases, however, the Comments stress that these are unusual situations—the exceptions which prove the rule. In general, "a lawyer is not required to make a disinterested exposition of the law," and "an advocate has [only] the limited responsibility of presenting one side of the matters that a tribunal should consider in reaching a decision" (Rule 3.3 Comment).

In sum, lawyers are obligated (a) to pursue a client's case (b) zealously (c) in an adversarial context, and (d) do this exclusively by communication within the institutional setting, while ensuring that all statements made (e) are not known to be false, (f) are supportable by evidence and reasoning, and (g) in a few limited

cases, are the whole truth.

3. NORMS OF ADVOCACY AMONG THE PUBLIC RELATIONS PROFESSIONALS

It may be surprising to some to discover that there are norms of public relations at all. The occupation seems to suffer especially in comparison to its sister profession, journalism. Both PR professionals and journalists are expected to get messages out to broader publics. But where journalists work under a well-understood set of norms including accuracy, fairness and independence, PR professionals may appear to outsiders to have no such guidelines. Thus the PR ethics literature contains complaints about students who think that PR is basically lying (Bernardini, 2011), journalists who when they switch to PR work immediately lower their standards and start using dirty tricks (PRSA, "Issues in Ethics"), and who patronize the PR professionals who provide them half their copy (McBride, 1989).

But this denigration of their profession has been fiercely resisted by national and international associations of public relations professionals. The Public Relation Society of America (PRSA) has been particularly forward in this regard, speaking out against "those who refer to our craft as spin, our professionals as flacks, and our currency as misrepresentation and disinformation," and stressing their "special obligation to practice their craft ethically" in their own sales pitch for themselves (Public Relations Society of America). In the following, I review the asserted ethical standards, starting with the core expression of the norms of public relations.

As we saw with the legal profession, PR associations express their central ideal as what we can recognize as a dilemma, putting into one sentence obligations to those they represent and obligations to the public. The PRSA identifies as its first value:

> ADVOCACY: We serve the public interest by acting as responsible advocates for those we represent. We provide a voice in the marketplace of ideas, facts, and viewpoints to aid informed public debate (PRSA Code).

An international association adopts the same language, although inverting the two ideas, perhaps to put first things first: "Advocacy. We will serve our client and employer interests by acting as responsible advocates and by providing a voice in the market place of ideas, facts, and viewpoints to aid informed public debate" (Global Alliance). An earlier version of the PRSA code was explicit about the tension, insisting that PR folk maintain their integrity "while carrying out dual obligations to a client or employer and to the democratic process" (PRSA 1988 Code).

As is obvious from the above quotations, the PR community takes advocacy itself as a value. But what such advocacy requires is, as with the legal community, more assumed than specified. PRSA defines "public relations" as "a strategic communication process that builds mutually beneficial relationships between organizations and their publics" (PRSA, "What is public relations?"). "Strategic communication" suggests a strong goal-directedness; this emerges in another ethics statement as well, which requires professionals "to vigorously pursue their [client's] organizational goals in educating or persuading audiences that matter most to

them" (Council of PR Firms). "Vigor" here parallels the lawyer's "zeal" on behalf of the client; as one case discussion put it, "PR professionals advocate—often vigorously—on behalf of those we represent. Our job is to promote a particular position or organization" (PRSA, "PRSA Speaks Out"). "Strategic communication" also puts the focus on communication—or as the PRSA Code puts it, "provid[ing] a voice in the marketplace of ideas, facts, and viewpoints to aid public debate." Finally, the context invoked in these statements is one where the PR professional must achieve his goals among multiple, relatively powerful, possibly competing voices: he is in a "marketplace of ideas, facts, and viewpoints" (PRSA Code), or "in the sphere of such complex issues as thorny policy debates, intense market competition or critical education needs in areas of public health, safety and well-being" (Council of PR Firms).

Advocacy as portrayed in these statements is thus the vigorous pursuit of a client's goals, using communication, in an environment of other communicators who do not share the same goals. What are the limits of this vigor? A first set of restrictions is imposed by the PR professional's need to preserve the system of communication which allows him room to be vigorous. Thus an earlier version of the PRSA Code provides that "a member shall not engage in any practice which has the purpose of corrupting the integrity of channels of communications or the processes of government" (PRSA 1988 Code). At times the statements speak as if what is involved is a principle of fairness: since PR advocates themselves benefit from freedom of speech and the free flow of information it allows, it is only right that they in turn respect the views and voices of others. This creates an environment where "a diversity of viewpoints and opinions" are "heard, but must compete on the merits of argument and fact" (PRSA PSA-06).

Practically speaking, however, it's hard to see how a lukewarm invocation of the Golden Rule would serve to restrain an advocate's vigor. So it is interesting that the ethics statements also put forward a second, more pointed, rationale for not "corrupting the integrity" of the communication system. PR professionals not only benefit in a general from principles of free expression, they also benefit very specifically from the independence of other professional communicators. Producers of movies, books, software and video games for example, want independent reviewers to give them a good rating. A business wants its local newspaper and television stations to report on activities which give it a good name. But reviews and reports are only trusted by the ultimate audience if they are unbiased. Thus while it may be tempting for the PR professional to ply the reviewers and reporters with gifts or threaten them with exclusion from access, when those incentives or threats are discovered (as they will be) the reviews and reports will then be worthless. A recorded ethics discussion of a case involving negative video game reviews analyzes this well:

> Larsen: A reviewer's credibility is on the line with their audience every time they evaluate a product — the nature of which demands honesty, fairness and bias-free analysis. However frustrating a negative review may be, a developer's relationship with reviewers is critical in reaching the marketplace. There is a trust factor between the two that should not be inhibited or breached by threats, which ultimately invalidate the assessment….

> Whalen: Absolutely. It's the independent third-party endorsement that makes public relations a valuable tool. If the client buys the review — either through actual monetary exchange or through intimidation — the reviewer has no credibility….Don't be afraid of a few negative reviews. Customers will often overlook a reviewer's comments and make up their own minds, but they have little tolerance for people who seem to be trying to manipulate them with fake reviews or intimidation (PRSA, "Issues in Ethics").

Thus the PRSA Code provides an explicit guideline for practice: "preserve the free flow of unprejudiced information when giving or receiving gifts by ensuring that gifts are nominal, legal, and infrequent;" and gives as an example of misconduct: "a member representing a ski manufacturer gives a pair of expensive racing skis to a sports magazine columnist, to influence the columnist to write favorable articles about the product."

This injunction to avoid "pay for play" parallels the similar injunction in the legal setting against bribing or intimidating witnesses, jurors, judges and other courtroom actors. But the unregulated openness of the public sphere in contrast to the institutional regularities of the courtroom adds another layer of complexity. In fact, it is not necessarily wrong for a PR professional to give other communicators compensation or assistance. Examples which turn up in the PRSA's cases include: payments to expert and celebrity endorsers; early and free access to product reviewers; giveaways at trade shows; payments for publishing advertorials; and support for public groups which in turn support the PR professional's client. The ethical issue that arises in these cases is instead one of openness and transparency—a very pressing issue indeed, judging from how frequently it turns up in materials on PR ethics. One association declares its commitments thus:

> We believe that our clients and the public are best served when third party relationships with spokespeople, bloggers, partners and allies are open and transparent.
> Our bias in counseling clients is toward disclosure, which we believe is appropriate as a principle and effective as a communications tool.
> Our clients and the public are best served when any relationship between third-party organizations and our clients is fully disclosed and when the sponsors of public relations tools such as video news releases and web sites are clearly identified.
> Third-party spokespersons, such as scientists, economists, scholars, celebrities, online media "influencers" such as bloggers, or other third party content experts who are involved in word of mouth communications, enrich the public discourse.
> Third-party organizations such as alliances or coalitions may be created to promote our clients' interests. When a spokesperson, expert or organization is paid for participation we will not conceal the paid nature of the relationship. (Council of PR Firms).

The PRSA similarly bars unattributed video news releases (PRSA, PSA-13), fake online reviews and other covert uses of social media (PRSA, PSA-08) and front (or astroturf) groups (PRSA, PSA-06). The rationale put forward for transparency is again that it is in the "client's best interest," as one case discussion explains, "since deceiving the media and the public(s) could contribute to declining public(s) trust in

the [client]…. [Full disclosure of sponsorship] would preserve the integrity of processes of communication and also help the [client] (and the public relations professional/firm) maintain important relationships with… citizens, voters, media and government officials" (PRSA, Ethics Case Study #3). PR advocates are thus obligated to be open about advocacy, since in the long run that is the only way for their advocacy to be successful.

The final set of restrictions focuses not on the PR professionals' relationship to other communicators, but on the commitments to veracity he is undertaking in his own communications. The ethics statements of all the organizations contain inspiring language about honesty in public relations work:

> HONESTY We adhere to the highest standards of accuracy and truth in advancing the interests of those we represent and in communicating with the public (PRSA Code).
> Tell the truth. Let the public know what's happening and provide an accurate picture of the company's character, ideals and practices (Arthur Page Society).
> We are committed to accuracy. In communicating with the public and media, member firms will maintain total accuracy and truthfulness (Council of PR Firms).

Again, one wonders whether these noble commitments are going to stand up against the pull of the commitment to advocacy. One association adopts a more restrained approach:

> Take all reasonable steps to ensure the truth and accuracy of all information provided. Make every effort to not intentionally disseminate false or misleading information, exercise proper care to avoid doing so unintentionally and correct any such act promptly (IPRA).

In this version, the PR professional has a significant obligation to avoid false statements ("every effort"), a moderate obligation to make sure that what he chooses to say is true ("reasonable steps"), and apparently no obligation to say all that he knows. While some ethics materials argue that full disclosure is, like transparency, necessary in the long run to preserve trust and make continued advocacy possible, this is not the only view. As one commentator put it, "you [the PR professional] give them [news reporters] information which will benefit your client if published. . . . You, of course, are supposed to give them accurate information and to do so as promptly as possible. But you are not obligated to tell the news media all you know"(Smith, 1972). In an advisory on "greenwashing" (advertising of products as environmentally sound), PRSA itself advises its members to "review product claims and make certain supporting marketing collateral and key messages accurately describe the product and avoid unsubstantiated claims….Product claims should be thoroughly vetted and defensible….Ensure that your green claim is completely substantiated and that you have the evidence to back up the claim" (PRSA, PSA-12). The emphasis here is on defensibility, not truth per se: on not making false claims, and on having support for the ones that do get made.

In sum: public relations professionals are obligated (a) to pursue a client's goals (b) vigorously (c) in a context where others have different goals, and (d) to do this openly, (e) avoiding non-communicative means, while ensuring that all

statements made (f) are not known to be false and (g) are defensible. Of these standards, (f) and (g) are the most debated within the community, and thus likely the least firm. (D) is the one whose breaches are most discussed by both the public and the PR community, suggesting the strength of the obligation itself, as well as the strength of the temptation to break it.

4. TOWARDS A GENERAL ACCOUNT

While some aspects of legal ethics might be traced to specific features of its institutionalized courtroom practice, public relations ethics has been developed in the relatively un-institutionalized setting of the public sphere, and in particular an environment that has experienced dramatic changes from the traditional to the new social media. Despite these differences, the pictures of advocacy that have emerged from ethics statements in law and public relations appear to converge. This gives us warrant to generalize from these two special cases to a general account of the ordinary communicative activity of advocating in any setting.

Lawyers and PR professionals are hired to speak for another person or organization. In general, however, an advocate does not need to formally be retained by another; she can undertake to advocate for another person or organization, for herself, or even for an abstract cause. We have no problem understanding a headline like "1,000 mobilize to advocate for an end to poverty," to take one random example.

Based on the models developed in law and PR, advocacy is appropriate in contexts where diverse voices, messages, positions, causes, etc. are circulating. This feature begins to differentiate advocacy from propaganda, where inequalities of power mean that only one message is being heard. It also distinguishes advocacy from the communication activities that can occur against a background of agreement. To borrow an example from Roger Pielke (2007), someone who yells "get to the basement!" when a tornado is coming would not to be said to be advocating.

In the courtroom setting, the diverse voices are in direct competition—the advocates are also adversaries. While competition among advocates may also occur in non-institutionalized contexts, it is not necessary. Competition, after all, is only one strategy among others for managing diverse interests. Outside of institutionally organized adversarial contexts, advocates may find that their goals overlap, or that there are mutually beneficial ways for them to coordinate their activities while seeking different goals, or in some cases, that they can simply ignore each other. Advocating may thus appropriately find a home among broad range of ordinary interactions that are neither openly competitive nor fully collaborative.

The activity of advocating is structured around two sets of obligations: obligations to the person, organization or cause advocated for, and obligations to the audience and other actors in the communication setting. These two sets of obligations are often going to be in tension with each other—an unhappy situation for the advocate, who might prefer to cut through the problem by jettisoning one set of obligations or the other. Indeed, in both legal and public relations ethics there is a long history of disputes about whether professionals should commit themselves just

to persuasive effectiveness or just to public service (Andrews, 2012; L'Etang, 2004). But as Craig & Tracy (1995) point out, "dilemmatic" goals are typical of communicative practices generally. The art of advocacy is to manage the dilemma as it arises on particular occasions.

To the person, organization or cause she is advocating for, the analysis above suggests that the advocate owes a well-established obligation of zeal/vigor in communication. She has committed herself not just to diligent efforts to achieve a goal, but to "intense ardour in the pursuit of [that] end; passionate eagerness in favour of a person or cause; enthusiasm as displayed in action," to quote the *Oxford English Dictionary's* definition of 'zeal.'

The other set of obligations is obviously more complex. These are owed to other participants in the communicative context—primarily to the audience, but also to other advocates, other communicators, and perhaps to the public generally. In the ethics statements in both law and PR, this set of obligations is traced back to a basic obligation not to undermine the "integrity" of the communication "system" which makes the advocacy possible—in essence, not to undertake methods of persuasion that would self-destruct. This rather vague idea is made specific in three ways.

First, the advocate owes it to her audience to be open about the fact that she is advocating. As we saw, this obligation received extensive comment in the PR community. It included in statements of legal ethics, likely because in the courtroom setting, the lawyer is manifestly an advocate. The legal rules do provide, however, that "a lawyer representing a client before a legislative body or administrative agency in a nonadjudicative proceeding shall disclose that the appearance is in a representative capacity" (Rule 3.9), which tends to confirm the weight of this obligation.

Second, the advocate owes it to other participants in the communicative situation, including her audience, to show respect for their autonomous roles. In legal and PR ethics, this obligation emerged in prohibitions against bribing, intimidating and harassing witnesses, jurors, judges, media professionals and other advocates. Generalizing to the ordinary activity of advocating, we can hypothesize that in advocating, a speaker disavows approaches to persuasion which tend to undermine her audience's abilities to make sound judgments. (Let me note that this is a preliminary formulation that definitely needs further refinement.)

Finally, the advocate owes her audience some obligation of veracity. Both legal and PR ethics insist that an advocate ought not say things she knows to be false. Both also agree that the advocate ought to have some non-frivolous reason(s) in support of what she said. Beyond that, it appears that the advocate's obligation of veracity is a limited one. Does she commit herself to having made a thorough investigation to back what she says, or to confirm its non-falsity? It doesn't look like it. Does she commit herself to telling the whole truth, including the bits that go against her? Not likely. Does she commit herself to sincerity—to saying only things she herself believes to be true? Definitely not. Indeed, in the courtroom setting, the legal advocate is prohibited from personally "vouching" for her client.

We can summarize this discussion with the following account of the ordinary activity of advocating:

> A speaker advocates when in the context of multiple voices or views she commits herself to the zealous support of a person or cause through communication, while at the same time doing this openly, disavowing persuasive means like bribery, intimidation and harassment, and committing herself to the defensibility and non-known-falsity of what she says.

5. IMPLICATIONS

Having gone some way to fill the gap with which we started, we can now return to the puzzling relationship of advocacy and argumentation.

Advocating is not the only speech act/activity which opens a space for arguments; proposing and accusing also commonly lead to making arguments (Kauffeld, 1998). Conversely, an advocate can pursue her goals by means other than arguments—as in the PR ethics statement quoted above, which notes that the advocate can proceed by "educating" in addition to by "persuading." Nevertheless, it does appear that advocacy is one of the paradigmatic situations in which arguments are likely to be found, as the textbooks in both Informal Logic and Communication assumed. An advocate works in a context where there are diverse voices; she is thus likely to be challenged to defend what she says, and she has furthermore undertaken an obligation to defend it. As Jackson and Jacobs explained in their classic paper on conversational argument (1980), ordinary arguments arise in just such situations, where the speaker's commitments are called out by a disagreeing auditor.

So: is argumentative advocacy a good, bad, or neutral activity? The last option can be rejected out of hand. We have seen that advocates undertake a complex set of obligations to the cause they represent and to their auditors. The advocate may want to persuade—or she may not: a lawyer can be convinced her client is guilty and ought go to jail, for example. But as an advocate, she is obligated to try to persuade. Thus while we might sympathize with someone who wanted to persuade, but whose attempt fell flat, we would blame an advocate if she didn't expend every effort to support her cause. Furthermore, as noted above the advocate undertakes several obligations that are in fact in tension with a straightforward effort to persuade by any means necessary. Falsehoods, bribery, intimidation and stealth may be effective persuasive techniques, but the advocate has foresworn them. Thus advocacy is inextricably normative; theoretical approaches which identify advocacy with effectiveness or persuasiveness *simpliciter* are inadequate.

Are the Communication textbooks right, in assuming that argumentative advocacy is a noble calling? Yes. Under ordinary conditions, arguers are careful to limit their burdens of proof (Kauffeld, 1999). But an advocate who is arguing comes close to committing herself to answering all doubts and objections—comes close to what Ralph Johnson (2000) has called the obligation of manifest rationality. This supererogatory burden means that the advocate is a sort of argumentative hero, an uber-arguer.

Are the Informal Logic textbooks right, in assuming that argumentative advocacy is suspicious? Yes. For the advocate's heightened obligations are not owed

to her auditors, but to the cause, person or organization for which she speaks. In advocating, a speaker is undertaking significantly weaker commitments to her auditors than she would if she were engaging them in conversation. In the ordinary act of saying something, a speaker commits herself to the truth of what she is saying and to having made a reasonable effort to ascertain that truth (Kauffeld, 2012). By contrast, in advocating, she is only committed to the non-known-falsity of what she puts forward. It is therefore entirely reasonable for the person on the receiving end of advocacy to subject it to heightened critical scrutiny.

Advocacy may also appear suspicious if we take something like a critical discussion as the normal or even exclusive context in which arguments may rightfully appear or be assessed. The obligations of an advocate and the obligations of a critical discussant in some ways align; both, for example, undertake a burden of proof to defend what they say (Rule 2, Eemeren, Grootendorst, & Snoeck Henkemans, 2002, pp. 182-183). But while critical discussants are supposed to limit themselves to arguments, advocates only disavow specific persuasive means like bribery, leaving the rest of the field of rhetoric open (roughly in violation of Rules 7 and 8). And most significantly, advocates do not promise to retract their standpoint if their advocacy fails (in violation of Rule 9). That would not be zealous. An advocate who gives in just because she can't come up with another argument is a normatively bad advocate.

To relieve her auditors' legitimate skepticism, an argumentative advocate might want to take on additional obligations towards them, committing herself, for example, to a more complete obligation of veracity or to following the rules of a critical discussion. If she tried to do so, however, she would likely find that these additional obligations are incompatible with her obligation of zeal, so her extra undertakings would serve to sharpen the ethical dilemma she faces. Moreover, even if she did try to take on additional obligations, it probably wouldn't work, for she wouldn't be believed. Imagine a used car salesman, for example, professing her extra efforts to ascertain, and her sincere belief in, the soundness of a beaten up old vehicle. Auditors can reasonably take these obviously self-serving statements as just additional dubious attempts to persuade.

Argumentation theory therefore needs to recognize that advocating creates a normative context in which arguments and arguers can be assessed, but one quite different from the context of ordinary conversation or critical discussion. In other work, I have defended the need for this kind of normative pluralism in argumentation theory (Goodwin, 2001b). Let me suggest one pay-off that recognizing the normative uniqueness of advocacy will give to argumentation theory more generally.

Arguments that get made in ordinary settings are commonly incomplete. How then do the auditors of arguments figure out what "missing premises" to fill in? Trudy Govier (1987) has proposed a principle of moderate charity, which allows auditors to presume that the arguer is cooperating with them in a mutual exchange of good reasons. If auditors are faced with a patently vague or ambiguous argument, they are allowed to fill in what is needed to make it more sound because they can presume that the speaker meant to provide "good reasons for claims that they believe" (p. 150). But this presumption is untenable if the arguer is an advocate. Far

from assuming cooperation and mutuality, auditors of advocacy should presume that the speaker means to provide the strongest possible reasons and appeals for claims they are committing to defend.

Consider the following example to see how this difference plays out in practice. Assume you are shopping for one of the new-fangled, efficient but expensive light bulbs at your local hardware store. While staring at the one of the multitude of options, you receive this message: "You should buy it—it lasts a lot longer!" This is an argument, and seems potentially relevant to your choice. But it suffers from a fatal vagueness: longer *than what*? How do you fill in the missing information? If the message came from your best friend who happens to be shopping with you, it would be reasonable to presume that he meant "longer than some light bulb that is directly relevant to your decision"—perhaps the light bulb you are current using, or the light bulb of a different manufacturer that is comparable to the one in question in every way except how long it lasts. Contrast that with the interpretation you would reasonably make if the message came from a display sign next to the light bulbs, marked with the manufacturers logo. In that case, I suggest, you would presume that the message really means "longer than some light bulb or other"—perhaps longer than one of the manufacturer's cheaper light bulbs, or longer than last year's model.

Instead of deploying a principle of moderate charity, auditors of an advocate reasonably adopt a principle of *discounting*. They can presume that the zealous arguer made the strongest non-false statement possible for her claim. So when an argument needs to be interpreted, auditors will not correct it to make it even stronger. In fact, they will be licensed to fill in information that makes the argument weaker, correcting for the advocate's likely overstatements.

This line of thinking raises for argumentation theory yet another puzzle about advocacy: *why*? It's often clear why the advocate wants to advocate—she may be a true believer in her cause, or she may be paid to do so. But why should her auditors lend her their ears? What benefit can they receive from listening to spin that advances someone else's point of view?—a message that they are going to discount? Why, in short, is advocacy pragmatically plausible (cf. Kauffeld, 1998)?

The ethics statements from both the public relations and legal professions recognized that zealous advocacy threatens to self-destruct: certain types of effective persuasive efforts undermine the "integrity" of the communication system, destroying the ongoing relationship with her auditors that the advocate needs in order to successfully advocate. When known falsehoods are mixed promiscuously with truths, communication passes no information and will be ignored; so the advocate disavows known falsehoods. When reviewers are bribed, they aren't trusted; so the advocate disavows bribery. But why doesn't any open, zealous attempt at persuasion self-destruct in the same way? What use could the advocate's commitment to her cause be to her auditors, who don't share her views?

In fact, even discounted the advocate's statements can be informative even to reasonably skeptical auditors. I have documented how this worked in the OJ Simpson closing arguments (Goodwin, 2001a), and Klonoff and Colby (2007) have written a manual for trial lawyers based on similar principles. In brief: because the advocate has openly committed herself to a zealous defense of her cause, her

auditors can presume that whatever she says is the strongest argument possible. If the case she makes doesn't add up to much, they can presume that there could be no better case, and simply dismiss the matter without further thought. If she leaves an argument or some evidence out, they can presume that that argument or evidence was so weak that it didn't help her much; they are licensed to ignore it as well. If she asserts a point that goes against her, they can presume that *that* point at least is true, without further examination.

Auditors of advocacy undoubtedly have a limited store of attention to waste on zealous advocates, but they are cognitive misers as well. Advocates allow them to outsource some of the time-consuming and wearisome activity of reasoning to someone who is zealous about it. The results of the advocate's labor are not in themselves very trustworthy—as the Informal Logic textbooks insist, they should not accepted without critical scrutiny. But the advocate's case can establish the outer bounds of the arguable, helping auditors to make reasonable decisions about what evidence, arguments and causes they can take for granted, or ignore without further consideration.

5. CONCLUSION

In this paper, I have shown how the ordinary activity of advocating is normatively structured, constituted from the advocate's dilemmatic obligations of zealous support for a cause and of a minimum of respect for the participants in the communication system. I've defended this analysis with empirical evidence from reflective practitioners, and with a brief account of why advocacy so conceptualized is pragmatically plausible. Argumentation theory and pedagogy has been on the right track in taking advocacy as a central concern; it is my hope that this preliminary analysis will contribute to increasing our appreciation for the normative complexity of the activity we study.

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ETHICS STATEMENTS—LAW

American Bar Association (2012). Model Rules of Professional Conduct. http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents.html

American Bar Association (1969). Model Code of Professional Responsibility. http://www.americanbar.org/content/dam/aba/migrated/cpr/mrpc/mcpr.authcheckdam.pdf

American Bar Association (1908). Canons of Professional Ethics.

ETHICS STATEMENTS—PUBLIC RELATIONS

Arthur W. Page Society (n.d.). The Page Principles. www.awpagesociety.com/about/the-page-principles/

Council of Public Relations Firms (2012). Code of Ethics and Principles. http://prfirms.org/join/the-council-of-pr-firms-code-of-ethics

Global Alliance for Public Relations and Communication Management (n.d.). Global Protocol on Ethics in Public Relations. http://www.globalalliancepr.org/website/sites/default/files/globalalliance/GA_Global_Ethics_Protocol.pdf

International Public Relations Association (2011). The IPRA Code of Conduct. http://www.ipra.org/about/ipra-codes

Public Relations Society of America (n.d.). Public Relations Society of America (PRSA) Member Code of Ethics. http://www.prsa.org/AboutPRSA/Ethics/CodeEnglish/

----- (n.d.). What is public relations? PRSA's widely accepted definition.

----- (1988). Code of Professional Standards for the Practice of Public Relations. http://www.paularuth.com/ethics.htm

----- (2005). Professional Standards Advisory PS-06, Disclosure by Expert Commentators and Professional Spokespersons of Payments or Financial Interests. http://www.prsa.org/AboutPRSA/Ethics/ProfessionalStandardsAdvisories/Documents/PSA-06.pdf

----- (2008). Professional Standards Advisory PS-08, Deceptive Online Practices and Misrepresentation of Organizations and Visuals. http://www.prsa.org/AboutPRSA/Ethics/ProfessionalStandardsAdvisories/Documents/PSA-08.pdf

----- (2009). Professional Standards Advisory PS-12, Questionable Environmental Claims and Endorsements (Greenwashing). http://www.prsa.org/AboutPRSA/Ethics/ProfessionalStandardsAdvisories/Documents/PSA-12.pdf

----- (2009). Professional Standards Advisory PS-13, Use of Video News Releases as a Public Relations Tool. http://www.prsa.org/AboutPRSA/Ethics/ProfessionalStandardsAdvisories/Documents/PSA-13.pdf

----- (2011). Issues in ethics: Rescuing reputations at risk. http://www.prsa.org/Intelligence/Tactics/Articles/view/9370/1035/Issues_in_ethics_Rescuing_reputations_at_risk

----- (2011). Public Relations Ethics Case Study #3, Disclosure of Information, Discussion Key. http://www.prsa.org/AboutPRSA/Ethics/Resources/CaseStudies/EthicsCaseStudy3DiscussionKey.pdf

----- (2011). PRSA Speaks Out Against Utah Mayor's Unethical Actions. http://prsay.prsa.org/index.php/2011/11/15/prsa-speaks-out-against-utah-mayor-unethical-communication-practices/

REFERENCES

Andrews, C. R. (2012). Ethical limits on civil litigation advocacy: A historical perspective. *Case Western Reserve Law Review, 63*, 381-439.

Bernardini, D. (2011). Why some students misunderstand ethics — and what to do about it. Retrieved from http://www.prsa.org/Intelligence/Tactics/Articles/view/9369/1035/Why_some_students_misunderstand_ethics_and_what_to

Craig, R. T. (1989). Communication as a practical discipline. In B. Dervin, L. Grossberg, E. Wartella & B. J. O'Keefe (Eds.), *Rethinking communication, Vol 1: Paradigm issues* (pp. 97-122). Newbury Park, CA: Sage Publications.

Craig, R. T. (1996). Practical-theoretical argumentation. *Argumentation, 10*, 461-474.

Craig, R. T., & Tracy, K. (1995). Grounded practical theory: The case of intellectual discussion. *Communication Theory, 5*(3), 248-272.

Eemeren, F. H. van, Grootendorst, R., & Snoeck Henkemans, A. F. (2002). *Argumentation: Analysis, evaluation, presentation*. Mahwah, NJ: Lawrence Erlbaum Associations.

Goodwin, Jean. (2001a). The noncooperative pragmatics of arguing. In E. T. Nemeth (Ed.), *Pragmatics in 2000: Selected papers from the 7th International Pragmatics Conference* (Vol. 2, pp. 263-277). Antwerp: International Pragmatics Association.

Goodwin, J. (2001b). One question, two answers. In H. Hansen, C. W. Tindale, J. A. Blair, R. H. Johnson & R. C. Pinto (Eds.), *Argumentation and its applications*. Windsor, ON: Ontario Society for the Study of Argumentation.

Govier, T. (1997). A new approach to charity. In *Problems in argument analysis and evaluation* (pp. 133-158). Dordrecht: Foris Publications.

Hollihan, T. A., & Baaske, K. T. (2005). *Arguments and arguing: The products and process of human decision making* (2nd ed.). Long Grove, IL: Waveland Press.

Jackson, S., & Jacobs, S. (1980). Structure of conversational argument: Pragmatic bases for the enthymeme. *Quarterly Journal of Speech, 66*, 251-264.

Johnson, R. H. (2000). *Manifest rationality*. Mahwah, New Jersey: Lawrence Erlbaum Associates.

Johnson, R. H., & Blair, J. A. (1994). *Logical self-defense*. New York: McGraw-Hill.

Kauffeld, F. J. (1998). Presumptions and the distribution of argumentative burdens in acts of proposing and accusing. *Argumentation, 12*(2), 245-266.

Kauffeld, F. J. (1999). Arguments on the dialectical tier as structured by proposing and advising. In C. W. Tindale, H. V. Hansen & E. Sveda (Eds.), *Argumentation at the century's turn: Proceedings of the Third OSSA Conference*. St. Catharines, ON: OSSA.

Kauffeld, F. J. (2012). Strategies for strengthening presumptions and generating ethos by manifestly ensuring accountability. In F. Zenker (Ed.), *Argument cultures: Proceedings of the 8th international conference of the Ontario Society for the Study of Argumentation (OSSA)* (pp. 1-15). Windsor, ON.

Klonoff, R. H., & Colby, P. L. (2007). *Winning jury trials: Trial tactics and sponsorship strategy* (3rd ed.). Louisville, CO: National Institute for Trial Advocacy.

L'Etang, J. L. (2004). The myth of the 'ethical guardian': An examination of its origins, potency and illusions. *Journal of Communication Management, 8*(1), 53-67.

McBride, G. (1989). Ethical thought in public relations history: Seeking a relevant perspective. *Journal of Mass Media Ethics, 4*(1), 5-20.

Pielke, R. A. (2007). *The honest broker: Making sense of science in policy and politics*. Cambridge: Cambridge University Press.

Public Relations Society of America. (n.d.). Communicating public relations' value: Business value and public good are essence of PR today. from http://www.prsa.org/Intelligence/BusinessCase/Communicating_Public_Relations_Value

Rybacki, K. C., & Rybacki, D. J. (2008). *Advocacy and opposition: An introduction to argumentation* (6th ed.). Boston, MA: Pearson.

Smith, A. N. (1972). The principle of advocacy. *Public Relations Quarterly, 17*(1), 9-11, 23-14.

Walton, D. (1998). *The new dialectic: Conversational contexts of argument*. Mahwah, NJ: Lawrence Erlbaum Associates.