

When Your Client Is The President

Fred Fielding recalls a significant moment from his time as White House counsel for President Reagan.



Fred F. Fielding

Law360, New York (October 25, 2016, 11:50 AM EDT) -- I really love the law, or more precisely the practice of law. It can be exciting, exhausting and frustrating all at the same time. But it provides one with a special sense of purpose, of being able to apply whatever amount of brainpower, common sense and written or oral skills you possess to provide help and assistance to others in the resolution of the problems they face or are thrust upon them.

I also love to provide legal counseling in the public service sector, for that gives one the special opportunity to participate in our nation's governance, dealing with issues of genuine long-lasting consequences that transcend a simple corporate decision or an individual's dilemma that needs settling. And while parallels certainly exist, there is no real comparison between lawyering in public service and in private life. I urge

any lawyer to seize the opportunity for public service — with care, the experience and rewards far exceed the monetary and professional rewards of private practice that might be foregone.

I've been blessed to be able to serve several "tours of duty" in public service, and have enjoyed the excitement and rewards of assembling a team of bright, able people to support my efforts to serve. And, I've often been asked to recall a significant moment or incident in my services as counsel to a president, especially a moment or situation that brought home to me the responsibility a lawyer owes to his or her client, be it an average citizen, a corporation, or a president. So, permit me to share one such experience.

To set the stage, in 1981, near the end of President Reagan's first year in office, he was riding a crest of high public approval, enhanced by his successful recovery from the assassination attempt that had shocked the nation less than three months into his term. Then a public dispute arose between the government and the union representing air traffic controllers. Union leadership had threatened to strike — which would have the potential of shutting down all United States airports and the nation's domestic and international air traffic. My client was very public about the irresponsibility of such an action, noting its impact on all our citizens and our participation in worldwide air commerce. He was also upset because these same air traffic controllers who were threatening to strike had taken an oath of office not to strike. In short order it became obvious that the sides were reaching an impasse. The president took the position that such a strike would be unlawful, and accordingly if that occurred he would fire them all.

And so lawyers from all affected participants and agencies of the U.S. government were put to the task to propose options and to ensure that any actions the president might choose to take would be solidly grounded within his legal powers. It was an impressive undertaking, melding the minds of attorneys from the U.S. Departments of Justice, Transportation, Labor, State and Commerce, as well as lawyers from the Office of Management and Budget and from my Office of Counsel to the President. All options were explored and tested for their legal applicability and appropriateness.

The culmination of all this work was what you would hope it would be — a solid legal basis for the president to act to remove the entire cadre of air traffic controllers if they chose to strike. Also, contingency plans were formulated and tested, so that in the event of a strike, skilled and trained replacements were immediately available to take the places of the strikers in the control towers of America's airways.

And it did come to the day of the strike deadline. Lawyers from the Office of the U.S. Attorney General and my office had prepared all the requisite papers in the event of the strike. We met with the president, who sought assurances that what was to be done was the right course for him to take. I assured him that what action he was taking was perfectly legal, but then was reluctant but compelled to also add, "unless there is an air crash in the first 48 hours." Why did I feel it was needed to be said? Simply put, regardless of the legalities involved, my client also needed to be made aware or reminded that of equal weight in his decision-making was the real-life element of risk, for if there had been an air crash on a runway in the first 48 hours, the public would have instantly assumed it was because of inexperienced air traffic controllers, put in the towers by a president who cared more about exercising his power than the safety of America's airways. I dare say, Ronald Reagan would have probably been a one-term president.

That experience brought home to me the awesome responsibility a president faces in the exercise of his leadership, and the need for a chief executive who has courage of conviction. But, that experience also brought home to me the real need for an attorney when providing counsel to a client to be sure to think beyond the law books to the real-life climate and context in which the client is making a decision and which must be considered in evaluating his or her options. And, it drives home to me that is a necessary part of being a counselor, instead of a mere scrivener, and that no matter how awkward and uncomfortable it may be to raise such points, it is part of one's responsibility to his or her client; it is owed to them.

—By Fred F. Fielding, Morgan Lewis & Bockius LLP

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