

Washington Law Review

Volume 13 | Number 1

1-1-1938

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Recommended Citation

James B. Kinne, State Bar Journal, *Legal Ethics*, 13 Wash. L. Rev. & St. B.J. 81 (1938).

Available at: <https://digitalcommons.law.uw.edu/wlr/vol13/iss1/9>

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Legal Ethics

Address by JUDGE JAMES B. KINNE, to class in Legal Ethics, University of Washington Law School, December 4, 1937

To be a lawyer one must not only be learned in the law, but have a knowledge of and practice the ethics of the profession.

The legal career has long been a notable and honorable one. The influence and learning of this profession was predominant in establishing our form of government and it has been a powerful influence in its perpetuation. What the future holds for our form of government is going to depend in a great measure upon the kind and character of influence the lawyers of our land are going to exert. This is particularly true of the judicial branch of our government.

In the concluding chapter of Wigmore's *Panorama of the World's Legal Systems*, recently published, which presents an impressionistic survey of law and justice in all the progressive race-stocks from ancient times to the present, he treats of the Anglican Legal System and closes the chapter with these words:

'And, looking back in its history, it is possible to believe that the one most important thing that has enabled the Anglican Legal System to survive and hold its own and expand, has been its possession of a strong, fraternal, well-trained profession of law. And it seems fair to conclude, if we may generalize from this survey of the legal systems of many races, that the perpetuation of any legal system beyond the life of a particular political dynasty or of a particular race-stock can be guaranteed only by the development of a highly trained professional class.'

In the earlier legal systems there were no professional advocates.

In the early Greek administration of law the emphasis was less on strict rules of law than on the general justice of the case. As a consequence of this, it led to the development of forensic oratory and a professional class of speech-makers naturally developed. They were not lawyers or jurists, but orators or "speech writers." The speeches of the Greek orators have been studied by successive generations of lawyers in every age and in every country. They were the forerunners of the profession of law.

In the Roman Legal System during the period of the republic, the juristconsult—the thinker and advisor upon questions of law—was developed. He was a consultant. There was also the orator or advocate whose knowledge of the law was secondary to his oratorical art. In this republican period of Rome, beginning about 400 B. C., there, as in Athens, the orator or advocate was the chief and typical figure of the legal profession and the juristconsult was in the background. The advocate received the highest public honors. The spirit of the Roman lawyers is shown by their definition of jurisprudence as "*divinarum atque humanarum rerum notitia, iusti atque iniusti scientia*," which freely translated means "the ability to distinguish between what is just and what is unjust is

an attribute partaking of both the divine and human." So far as I can find, this was the beginning of the ideals or ethics of the profession.

Under the Anglican System the profession of law developed from the Inns of Court which began about the year 1300, about two centuries before the profession developed in Germany, the Netherlands and Scandinavia and other pure Germanic countries. These Inns grew around the courts at London and were guilds of lawyers with their apprentices, because every occupation was in those days organized in a guild. The apprentices of law lodged, ate and studied in these Inns. They were like the colleges at Oxford and Cambridge and the dormitories and fraternity houses in a modern American university. They were spoken of as Universities for the study of the Law.

Sir John Fortescue, who in 1442 was Chief Justice of the King's Bench, wrote:

"Law is a holy sanction or decree commanding those things that be honest, and forbidding the contraries."

And again:

"Man's laws are nothing else but certain rules whereby justice is perfectly taught."

Through their training in the Inns of Court, members came to the practice and the administration of law with high ideals as to the greatness of their calling. The self-governing Inns of Court trained the legal profession in high standards of professional honor. These ideals came to the lawyers of America from the English system and were taught by lawyers in their offices to succeeding generations of lawyers.

Ethics is the name generally given to the science of moral philosophy, but is usually confined to a particular field of human character and conduct so far as they depend upon or exhibit certain general principles commonly known as moral principles.

I want to deal more particularly today upon the duty which the lawyer owes to the court, to his professional brethren and to his client. The duty of a lawyer, clearly and succinctly set forth in the Code of Ethics of the American Bar Association, simmers down to honesty and fair dealing which should not only be followed by a lawyer, but by every professional and business man—rules which were first set forth in the Decalogue.

It is interesting to note that the first canons of ethics were adopted by the American Bar Association at its meeting in Seattle on August 27, 1908. The first paragraph of the preamble is as follows:

"In America, where the stability of Courts and of all departments of government rests upon the approval of the people, it is peculiarly essential that the system for establishing and dispensing Justice be developed to a high point of efficiency and so maintained that the public shall have absolute confidence in the integrity and impartiality of its administration. The future of the Republic, to a great extent, depends upon our maintenance of Justice pure and

unsullied. It cannot be so maintained unless the conduct and the motives of the members of our profession are such as to merit the approval of all just men."

It is the duty of the lawyer to maintain toward the court a respectful attitude, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance. Judges not being wholly free to defend themselves are peculiarly entitled to receive the support of the bar against unjust criticism and clamor. It is the duty of the bar to endeavor to prevent political considerations from outweighing judicial fitness in the selection of judges. It should protest earnestly and actively against the appointment or elevation of those who are unsuitable for the bench and should strive to have elevated thereto only those willing to forego other employment, whether of a business, political or other character, which may embarrass their free and fair consideration of the questions before them. A lawyer should ever remember that he is an officer of the court. He should not attempt to exert personal influence upon the court. The conduct of the lawyer should be characterized by candor and fairness without deceit, imposition or evasion. He should not knowingly misquote the contents of a paper; the testimony of a witness, the language or argument of opposing counsel, or a decision or text book; nor, with knowledge of its invalidity, cite as authority a decision that has been overruled, or a statute that has been repealed. A lawyer should not offer evidence which he knows the court should reject in order to get the same before a jury by argument for its admissibility. Neither should he introduce into an argument or address to the court remarks or statements intended to influence the jury or bystanders. These and kindred practices are unprofessional and unworthy of an officer of the law charged with the duty of aiding in the administration of justice and who has a responsibility, equal to that of the court itself, to see that justice is fairly and justly administered.

Adverse witnesses in suits should always be treated with fairness and consideration. In my opinion, the most successful trial lawyers do not transgress this canon, but by simple, direct questions and quietness of manner they seem to secure better results in their cross-examination than the uncivil, bellowing, bulldozing type of lawyer. Politeness in courtroom conduct pays good dividends. Be prepared. A lawyer owes a duty to the court as well as his client. He should not assume that the judge knows all the law. He will be helpful to the court and enable it to reach a proper decision by having his authorities ready for immediate citation. In attempting to excuse his lack of preparation, he should not use the stock phrase, "that is elementary."

Every trial, no matter how large or how small the amount involved, is an important trial—important because so near as is humanly possible every case should be properly decided.

Aim to repress everything like excitability or irritability. Words may be spoken, or things done, which a lawyer afterwards wishes could be unsaid or undone.

Toward his brethren of the bar the lawyer should show the utmost consideration. His word should be as good as his signed stipulation. So far as possible, important agreements affecting rights of clients should be reduced to writing, but it is dishonorable to avoid performance of an agreement because it is not reduced to writing as required by rules of court. The lawyer should not ignore known customs or practices of the bar or the court, even when the law permits, without giving notice to opposing counsel. He does not owe any duty to a brother member of the bar to overlook corrupt or dishonest conduct, but on the contrary, should expose the same before the proper tribunals. Be truthful—a failure of this virtue makes the lawyer the object of distrust among his professional brethren. That the members of the bar have a good opinion of a lawyer is of the utmost importance. In fact his greatest satisfaction, as well as his success, depend upon his relations with his brethren of the bar. Their good opinion of him will be gained by his faithfully and liberally keeping every promise or engagement made with them. If his truthfulness is questioned by them the relationship is not going to be pleasant. It is not only morally wrong, but dangerous, to mislead an opponent. Do not acquire the reputation for being a sharp practitioner. Be liberal with opposing counsel. The newly admitted lawyer should strive to build among his brethren of the bar a reputation for legal character, not only for his personal satisfaction, but for the good regard of his brothers in the law. In the long run a lawyer will find that the good opinion of his professional brethren is of more importance than what the public thinks of him, because sooner or later the real public, having important business to be transacted, will want to know how his associates of the bar estimate his professional reputation and ability.

A lawyer has the right to undertake the defense of a person accused of crime regardless of his personal opinion as to his client's guilt, and having undertaken it, is bound by all fair and honorable means to present every defense that the law of the land permits, to the end that no person may be deprived of life or liberty but by due process of law. 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 withheld from him save by the rules of court legally applied. No fear of judicial favor or public unpopularity should restrain him from full discharge of his duty. A client is entitled to the benefit of any and every remedy and defense that is authorized by the law of the land. The office as attorney does not permit, however, violations of any law or any manner of fraud or chicanery.

Setting up false claims by the unscrupulous in questionable transactions is not within the proper discharge of his duty. Such conduct deprives the profession of public esteem and creates prejudice against lawyers as a class. Under all circumstances, the utmost candor should be used toward the client who is entitled to know his lawyer's candid opinion of the merits and probable result. Considerations of duty and interest demand this. Encourage

amicable compromise if the case is of a character to justify it. He should do his duty manfully, without fear, favor or affection. It is the duty of a lawyer to preserve inviolate within his breast any communications made by a client to him in the course of professional employment. If a lawyer finds some fraud or deception has been practiced he should endeavor to rectify it. He should never render any service or advice involving disloyalty to the law or disrespect of the judicial office which he is bound to uphold. Absolute honesty is a prerequisite to a lawyer. His duty is to present his case to the best of his ability and with fidelity not only to his client, but also to the court. He must exert all the industry and application of which he is capable; be the master of all questions at issue; be prepared for what may be done on the opposite side. He must know what facts are material and at the earliest moment interview his witnesses and keep watch upon them that their testimony may not be lost. He must obey his own conscience—not that of his client. He will find the highest honor in a deserved reputation for fidelity to private trust and to public duty, for being an honest man and a patriotic, loyal citizen. A high moral principle is a lawyer's only safeguard.

When a lawyer is in doubt as to his duty he will find in the canons of ethics an answer to his problem. In the beginning a lawyer needs the prudence and self-denial as well as the moral courage which belong commonly to riper years. He may make mistakes in the field of ethics unless he peruses the canons frequently and carefully, or he may make mistakes of legal etiquette because there are customs of the bar which he may unwittingly violate. This code embraces the courtesies exchanged among those engaged in the practice of the law. Many are the temptations presented to the young lawyer. When he is starting out and his clients are few and fees are small and he is discouraged, there are those who will know of his situation and some scheming individual will tempt him to do a shady legal trick. It is then that his mettle is going to be tested and his answer is going to determine in a great measure his future as a lawyer. If he fails in his duty and succumbs to the lure of pelf, the judge and his fellow practitioners are going to learn of it first and soon the public will know that his office is the place to frame shady or dishonest deals and that he is a lawyer who cannot be trusted and his career as an honest and reputable lawyer is ended.

A lawyer cannot win all his cases, but when he has the inward satisfaction of knowing that he has presented all the competent evidence available and the law applicable thereto, then win or lose, he has properly performed his duty to his client.

He who does not have an ambition to be a good lawyer, to rise to a high place in the practice of the profession, should never engage in the practice of law. One should enter the practice of law with the aim to improve the character of the profession that the true ends of justice may be attained, a purpose in which one may well and worthily employ his efforts and influence. A lawyer should have a sensitive appreciation of the position of the

profession and a desire to increase its prestige. It has often been said that "the law is a jealous mistress." To be successful, a lawyer must continue to be a hard student of the learning of his profession, and not merely investigate the law applicable to the case in which he may be interested. A lawyer should be attentive, accurate, punctual and avoid procrastination. Frequent applications to the court to relieve him from the consequences of his inattention tell badly on his character and business. Accuracy is a great advantage over opposing counsel—a great recommendation in the eyes of intelligent business men. A professional note to a merchant carelessly written may produce an unfavorable impression on his mind and that impression he may communicate to many others. Every lawyer should fulfill his duty with dignity, loyalty and integrity. In recent years particularly, much misinformation has been spread about lawyers in general and the administration of the judicial departments of our government in particular. As a result, the unsuspecting and uninformed public has been permeated with a false conception of what the vast majority of the lawyers and the law really stand for. It is the duty of the legal profession to correct this false impression in the public mind.

A lawyer should be prompt, prepare his pleadings as soon as he has decided on the theory of his suit and press the case to an early trial. A lawyer gains business if he acquires a reputation for securing a speedy result. Frequently litigants complain to the court that they cannot get their lawyers to do anything.

Poor lawyers are a plague to the legal profession and do as much to give the profession a bad name as dishonesty and chicanery. The unethical lawyer constitutes only a small percentage of the bar, but one case of unethical conduct, noised abroad, makes more impression on the public than one hundred instances of reputable practice. Unethical conduct creates a distrust of the bar. Unless one is an ethical lawyer he cannot be an effectual lawyer.

You are soon to enter the practice of the law. Aim high—hitch your wagon to a star. In ours, as in all free countries, the profession is the avenue not only to wealth but to political influence and distinction. A very great number of our Presidents have been educated for the bar as have also a large proportion of cabinet members, foreign diplomats and legislators, both state and national. Unlimited opportunity is yours. By industry, application and integrity the heights of eminence, honor and usefulness which you may attain are limited only by your capabilities.