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## Keynote Address

Gerald Kogan\*

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## *Survey of Florida Law*

### Keynote Address at the 1991 Nova Law Review Banquet

**Justice Gerald Kogan\***

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I know tonight is a busy program. However, there are some comments that I want to make to you. I haven't really discussed these matters at all today, despite my four previous speeches. These are matters that are very close to my heart and something that I have always been concerned about—and quite frankly, more concerned now than ever before. You know, one of the classes I taught when I was here at Nova was Professional Responsibility. I remember the key question I used to love to ask. I'd look at the class and I'd say "you're sitting in your office. You're a practicing lawyer and this well known drug dealer marches in and puts down right in front of you \$250,000 in cash, all in one, five and ten dollar bills and asks you to represent him in a drug case. And you know where the money came from. Undoubtedly he made most of it in the local school yards in your community. Would you take that money to represent this man?" And in the true spirit of the legal profession, everyone said "yes." After all, even a drug dealer is entitled to have proper representation and as far as where the money came from, I remember an incident that once took place when I was in a place called Petticoat Lane. It's a flea market, and it operates only on Sunday mornings. I remember shopping and looking around when a man spoke to this fellow with a Cockney accent and said to him, "You know, I'm wondering if these are hot goods you're selling here." And his comment was, "Sir, you don't ask me where I get my merchandise and I won't ask you where you get your money from." And so it is that lawyers are faced with this kind of a decision almost daily in one form or another, whether you're doing civil work or criminal work, the main question arises and the one problem we all face in the profession is simply the matter of what is our professional responsibility. Very simply, what are we talking about when we talk about legal ethics? What

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is the responsibility that we owe not only to the courts and our fellow lawyers but also to our clients, and what do we owe to the general public? I like to look upon the law as being a high minded profession. I like to look upon the law as being a way that we, as lawyers, can do service to society; to better society, no matter what field we happen to go into. I am chagrined and I am disturbed when lawyers go to law school for one purpose and one purpose only, and that is to see how much money they can make in the practice of law. Now making a lot of money is not a bad thing to do. It brings a lot of the conveniences and enjoyment that are out there like the food that you have to buy. But at the same time the ones that spend their entire professional life after the pursuit of money is not, in my opinion, what being a lawyer is all about. Because when money becomes the sole object we begin to forget our purpose in society and our purpose is to help our system of justice proceed in an orderly manner where justice is brought to all those who are served by our court system and by our attorneys. If we forget that, we are without any question in deep trouble.

We have a situation now that pervades our profession that, quite frankly, causes me to be ashamed. We know of instances, for example, where the biggest and most important thing that now prevails in the legal profession is what is known as the billable hour. Now for those of you who are not yet in practice, you will pretty soon be introduced to that billable hour. Your entire legal career, if you're in a particular law firm, will be dedicated to the billable hour. That simply means you have to put in the work because we have to make the money in this law firm to pay your salary, to pay our overhead and to pay for all the employees that we have in this particular office, and that's the most important thing that you can possibly do. As a result, what has happened is we have a generation of lawyers that have gone out there and have worked like dogs trying to meet their billable hours, and as a result of working many, many hours in excess of what they need, we've seen that their families have been affected, we've seen marriages that have broken up. We've seen all sorts of horrors take place. We've seen lawyers who have become alcoholics, lawyers who have become addicted to drugs. Much of that stems from the type of hours that lawyers put in trying to satisfy the billable hour.

We see other horrors that are occurring. The other horrors are a lawyer takes three files down to the courthouse and works on those three files from nine until twelve. Then when the lawyer gets back to the office, instead of apportioning the three hours amongst the three files the lawyer charges client A for three hours, client B for three

hours and client C for three hours. Now that's outrageous. And these are things that clients are becoming more and more aware of. As a matter of fact, for those of you who aren't aware of this, house counsel have now become a fact of life with many of our large corporations. They feel why should I spend all this money by hiring lawyers outside the corporation who I know are going to charge me for every stamp that goes on a letter, for every sheet of paper they put through a fax machine or through the word processing machine. Every time I turn around I get another bill for something else when I can do that a lot more cheaply by having my own lawyers and use them in my corporation as house counsel, and they find that they do as good a job as the law firms.

What we have effectively done in our pursuit of the almighty dollar in our profession is price the average citizen out of the legal services market. The average wage earner in America today cannot afford to hire a lawyer. It is an absolute impossibility unless it's on a contingency basis. If they want ordinary routine legal work done, they just can't afford it. And as a profession we have fought mandatory pro bono. I have heard lawyers and law professors argue before our courts and say to force lawyers to do pro bono work is equivalent to ignoring the existence of the Thirteenth Amendment to the United States Constitution. Now I do think that goes a little bit too far and I told that particular law professor, when he argued in front of us several months ago, that he was going way overboard, and he kept saying to me that the founding fathers have nothing to do with the Thirteenth Amendment. That came later and the Thirteenth Amendment was not to free lawyers from involuntary servitude. This amendment was not passed to prevent you from having to do pro bono work. As lawyers we take a great deal out of our society, and as lawyers we must put back into that society in proportion to what we take out by service to our community, by doing pro bono work, we have to put back in that which we take out. I know a lot of lawyers who are really going to get angry when they hear something about that but, quite frankly, I just don't care because I think that we owe this to society and we better start doing it because as lawyers we don't have a very good reputation anyway in the community. If you ask somebody out there, a lay person, where lawyers rank, you'll find that we rank just above the used car salesmen as far as respect goes. We were talking at the table earlier when it was acknowledged that doctors are really heading in our direction as well, and it's time that all of us turned around and started reconsidering where we're going.

So I commend all of you when you go out into the practice of law, whenever it may be, realize that you have a privilege to practice law. You're in a unique situation. When you pass that bar exam and you're sworn in as a member of any bar anywhere, you gain a license that allows you to have privileges that the average citizen does not have, and because you have these privileges, expect to give something back to the community. I think this is the biggest problem that, as lawyers, we are currently facing and it certainly demands our attention. I just want you to know that I'm not just picking on lawyers. I'm going to pick on judges a little bit while I'm standing up here.

One thing that I've always cited to and that is the fact that we as judges does not put us in a category where all of a sudden on the day we put the robe on there ascended down from the sky wisdom that we never had before and embedded itself in our skulls. We have the same brain power and, in some cases, lack of brain power when we got on the bench as we had the day we were practicing law, the day before we ascended to the bench. We are very, very dependent on the lawyers, quite frankly, to aid us and assist us in doing what we should do when deciding cases. If we ever say that we've learned everything, then our system is headed for deep trouble. So let's not dicker with that one. I think the problem with our judges, as with the attorneys, is that we have come to expect certain things by judges that many of them are unwilling to give us. Hopefully, our judges, through a better system to select judges than we may have now or systems that we ought to develop, will bring us judges who can essentially do what I consider the three major things that a judge has to do to be effective. First of all, he can be a Phi Beta Kappa in undergraduate school, you know graduate summa cum laude, with highest honors, be an editor to a law review and all that sort of stuff, but quite frankly that doesn't mean very much when you take the bench unless you have the three qualities I'm about to tell you about.

The number one quality is in order to be a judge you've got to be able to make decisions. If you can't make a decision you don't belong on the bench. Number two, you must have a deep understanding of the human condition, and by that I simply mean you must understand what makes people tick. You must understand about cultural differences, about ethnic differences, about how various groups react to various situations and that not everybody reacts the same in the same set of circumstances. Not everybody had the same background. Not everybody looks at the world like you may look at it, and that doesn't mean that they're looking at it and their view is wrong. Their view may be

just as right as your view and their view may be right and your view may be wrong. So you must understand what these people have to say, why they say it and where they're coming from to understand what the human condition is all about. And thirdly, you have to have courage. And that is the courage to be able to do what you feel is right, regardless of the political or personal consequences that you, as a judge, may suffer. If you're the type of judge who's going to sit on the bench and say "well, if I rule this way it's going to hurt me in the next election," and then don't rule that way because you want to save yourself all that aggravation, then you quite frankly do not belong on the bench. And that you as attorneys have got the right—and the members of our community and our society—have got the right to demand that our judges do just that, and that is make the courageous decisions when they feel in their heart and their mind and in their conscience that is the right thing to do. And if it is the right thing to do and they believe it to be right, then they must go ahead and do it regardless of the effect it may have on them politically or personally.

It's going to be up to you as lawyers, when you're out there practicing, to make sure that you hold the judge's feet to the fire. Do not ever be afraid to speak up against injustice. Do not ever be afraid to take a judge to task if that judge is not doing the job that they should be doing, because as I said before, our system cannot survive unless we require that of our judges.

These are some very simple things that I like to talk to law students about, about your ethical responsibility and about the judge's ethical responsibility. If we all get our acts together, then maybe someday we can have a better perception by the public as to what we lawyers and judges are all about. So it's been a great day for me. I've enjoyed being with you and I want to congratulate the law review staff on the fine job they've done. I wish the new law review staff good luck. And contrary what you may believe, we do occasionally read law review articles, especially when we have to because we're researching that particular problem. So it doesn't go completely in vain, although I must admit when I get all the law reviews from the State of Florida the reading I have to do can become difficult, but at least I peruse them and I put them aside and I remember, strangely enough, when a problem comes up that we've got a law review article somewhere. They are very, very helpful, so they're not written for naught. Judges *do* look at them and researchers *do* examine them, they can be very, very helpful, and they do from time to time have an instrumental part in creating our opinions. So everybody keep up the good work. Thanks for having

me down here and again, to those of you who are going to graduate pretty soon, good luck on your bar examination and good luck in the practice of law. Remember give back to the community that which you take out of it as an attorney, whether it be in the form of community service, whether it be in the form of pro bono. And if any of you ever aspire to the bench, remember those three things; you make decisions, understand the human condition, and have the courage of your convictions to make the right decision regardless of the personal consequences. If you do all of those things, I'll be very, very happy and all of us will be on our way to making our profession what it should be.