Courtesy on High

Justice Stanley Mosk

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Abstract

In the 1992 presidential campaign, both President Bush and Vice president Quayle launched attacks on lawyers.
In the 1992 presidential campaign, both President Bush and Vice President Quayle launched attacks on lawyers. They stimulated some invective followers to recall the line in Shakespeare's Henry V: "The first thing we do, let's kill all the lawyers."

Those who employ that infamous quote apparently are unfamiliar with the context in which it was spoken. In the Shakespearean tale, Jack Cade of Ashford was a common rabble-rouser hoping to foment a rebellion against the throne. He enters a tavern and announces: "When I am King, as King I will be... there shall be no money, all shall eat and drink on my score; and I will apparel them all in one livery, that they may agree like brothers and worship me, their Lord." At that point, Dick the Butcher, a simple follower, declares "The first thing we do, let's kill all the lawyers."

To the mind of the rabble, it was lawyers who wrote and enforced the country's laws. Do away with lawyers and thereby do away with the rules of civilized society. One would hope that those who blithely cite Shakespeare's line today do not share the underlying motivation of this play's character.

Of course there are lawyers who are ascendants, boorish and unethical in practice and a discredit to the profession and an offense to the public. But no profession as a whole does more to enforce high standards of personal conduct than the bar. Be considerate of your client, lawyers are told. Be deferential in court, they are instructed. Treat your opponent with respect. Failure to adhere to those standards is likely to result in discipline by the organized bar.

Practicing lawyers have been told, since law school days, that they will derive ethical inspiration from the demeanor of judges. Certainly judges treat each other with respect, even when they may disagree in individual cases on legal principles. Obviously lawyers can usually look to the scholarly and dignified justices on the highest court in the land for guidance on how to conduct themselves in a courteous and temperate manner, even in contentious litigation.

Sadly, however, not always.

On June 24, 1992, the Supreme Court decided Lee v. Weisman, a case...
involving a religious invocation and benediction at a public school ever. There were three prevailing opinions, and a dissent written by Justice Scalia. Following are a few choice quotations from the Scalia opinion:

"As its instrument of destruction, the bulldozer of its social engineering, the Court invents a boundless and boundlessly manipulable, test of psychological coercion . . . ."

". . . . the changeable philosophical predilections of the Justices of this Court. . . ."

". . . cannot disguise the fact that the Court has gone beyond the realm where judges know what they are doing."

"The Court's notion . . . is nothing short of ludicrous."

"It is beyond the absurd . . . ."

"Logically, that ought to be the next project for the Court's bulldozer."

". . . . the Court's solemn assertion . . . would ring as hollow as it ought."

". . . . the Court's psycho-journey."

". . . . a jurisprudential disaster . . . ."

". . . . senseless in policy . . . ."

One must respect a justice who adheres to principle as he or she sees it. And we admire a justice who expresses principle thoughtfully, even forcefully, in opposition to the prevailing views of others on the same court. However, one must doubt that the disreputable and intemperate language used in the Lee v. Weisman dissent sets an appropriate example for the bench to give the bar.

Perhaps our best hope is that lawyers who may be tempted to speak in such a manner to the judge or to opposing counsel do not look to Supreme Court opinions for guidance.

This issue of the Nova Law Review may be devoted to legal humor but Justice Scalia's hardened and discourteous expression is no laughing matter.

2. Id. at 2679.
3. Id.
4. Id. at 2681.
5. Id.
7. Id.
8. Id. at 2683.
9. Id. at 2684.
10. Id. at 2685.
When on Mars

Arthur Garwin

While mining for ore on Mars, earth settlers found evidence of an ancient civilization that apparently flourished for centuries and then suddenly disappeared. Artifacts revealed a culture much like our own. Linguists, upon successfully learning to translate some of the Martian language, discovered one startling difference between the cultures. Martian society greatly revered its lawyers, known as kzyqwywqy (prosecution unknown), which literally translates as wise, virtuous and impartial seekers of truth and justice. Archaeologists also came upon what appeared to be the kzyqwywqy rules of professional responsibility, which startlingly enough almost exactly paralleled the structure of the current ABA Model Rules of Professional Conduct (leading historians to believe that maritans and earthlings may have communicated—a theory later supported by the discovery of photographs of maritans on earth in the company of Howard Hughes). The Martian Ethics Rules, though similar in regard to structure and subject matter, differ greatly from our own in terms of approach. Therefore, it is with an open mind toward change that we present the loosely translated Martian rules of professional conduct for lawyers.

1.1 Competence

If during the initial interview with a client, a lawyer states on three or more occasions, "It's very technical and difficult to explain, just trust me," the lawyer is not competent to handle the client's matter.

1.2 Scope of Representation

If a client is paying for a lawyer's services, the lawyer shall follow all of the client's instructions, unless the instructions are illegal, immoral, or cause the lawyer to lose sleep at night.