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ETHICS IN THE EVERYDAY PRACTICE OF LAW*

REV. THOMAS J. PAPROCKI**

It is a pleasure for me to be invited here this evening to address Loyola Law School's chapter of the Catholic Lawyers Guild. Eleven years ago I sat in this building as I took the Illinois Bar exam. Let me assure you that it is much more pleasant for me to be with you today under these circumstances!

The fact that I am an attorney as well as a Catholic priest strikes some people as a curiosity. One person even went so far as to describe the combination of "lawyer" with "priest" as an oxymoron! While I will admit that the combination is somewhat rare, I have never viewed law and priesthood as occupying separate places in my life, as if I somehow need to manage the practice of two distinct professions. When I spoke with Cardinal Bernardin about being both a priest and an attorney, he gave me his blessing as long as I remembered that priesthood always comes first. That has always been my approach. I went to law school after being ordained a priest in order to acquire a tool to help me be more effective in my ministry as a priest, especially in the area of social justice. That is all the more reason I am happy to have this opportunity to further develop

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the point of intersection between my ministry as a priest and my profession as a lawyer.

To a great extent, what I have said about my own personal self-awareness of vocation also applies to each one of us. Even though you are not priests, your identity as Catholics precedes and must always remain prior to your calling as an attorney. That is what it means to keep things in perspective and have a sense of priorities in one's life. My objective this evening is to try to provide some guidance on how to do this by sharing some of my fundamental beliefs and reflections about ethics in the everyday practice of law.

I. BEYOND LEGAL CLINICS AND PRO-BONO

As mentioned in my introduction, I am the co-founder of the South Chicago Legal Clinic. Last year we celebrated the tenth anniversary of its founding. Because of this background, I have developed some expertise in the area of establishing and running not-for-profit, tax-exempt legal clinics as a way of making the legal system more accessible to the poor. This certainly is one approach to fulfilling our ethical obligations as attorneys. However, I would be among the first to recognize that, as valuable as this approach is, it remains only one approach.

Similarly, when discussing ethics in the law, it is easy for a group of attorneys or law students to focus their attention on the issue of pro bono legal services, that is, the provision of free legal services to the poor pro bono publico, for the public good. Again, this is an essential ethical responsibility of our profession, and a great deal of time and attention is currently being focused in this area. This is as it should be. The legal profession deserves great praise and admiration for this. For unlike the medical profession, which has the benefit of governmental assistance to provide at least some compensation for medical services for the poor through programs such as public aid, Medicare and Medicaid, it is the lawyers themselves who help the poor through the sacrifice of their own time and effort. Without resting on our laurels, and while recognizing the continued need for more lawyers and law firms to fulfill their ethical responsibilities in this regard, the legal profession can rightly be proud of its pro bono efforts.

Nevertheless, we would be kidding ourselves if we think that we can adequately discuss the topic of ethics in the law if we focus on the issues of legal clinics and pro bono services. For these specialized areas only address a very small, albeit quite visible, aspect of our ethical responsibilities in the practice of law. Since most of you will spend the vast majority of your time dealing with matters other than legal clinics and pro bono cases, I would like to focus my reflections on the ethical issues which confront attorneys in the everyday situations which arise in the practice of
II. EVERYDAY SITUATIONS OF PRACTICING ATTORNEYS

In his message in the August 1991 issue of the ABA Journal, the President of the American Bar Association, John J. Curtin, Jr., lamented the need for the U.S. Seventh Circuit Court of Appeals to establish an Ad Hoc Committee on Civility, perceiving this as a negative comment on the perceived state of the profession.\(^1\) The interim report of this committee had expressed concern about the general decline in civility among members of the bar and, in particular, the rise of “Rambo-style litigation tactics.”\(^2\)

“Rambo-style litigation tactics” are described as:

- A mindset that litigation is war and that describes trial practice in military terms.
- A conviction that it is invariably in your interest to make life miserable for your opponent.
- A disdain for common courtesy and civility, assuming that they ill-befit the true warrior.
- A wondrous facility for manipulating facts and engaging in revisionist history.
- A hair-trigger willingness to fire off unnecessary motions and to use discovery for intimidation rather than fact-finding.
- An urge to put the trial-lawyer on center stage rather than the client or his cause.\(^3\)

The interim report of the Seventh Circuit’s Committee attributes the increased incivility in the practice of law on a variety of factors, including the fact that “older lawyers less and less are fulfilling their traditional roles as mentors to young lawyers on matters of ethics and etiquette.”\(^4\) Thus, Curtin asks, “What can we do to end the slide of law practice from congenial professionalism to abrasive confrontation?”\(^5\) Among suggested solutions is “the need for increased collegiality through mechanisms like the Inns of Court movement.”\(^6\) A recommendation such as this should provide encouragement for the further establishment of local Inns of Court and other groups of attorneys which seek to foster civility in the practice of law.

While efforts such as these provide a starting point for addressing the issue of ethics in the practice of law, a pitfall for people, even those as

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\(^2\) Id.
\(^3\) Id.
\(^4\) Id.
\(^5\) Id.
\(^6\) Curtin, supra note 1.
dedicated as you are, is the threat of feeling overwhelmed by the magnitude of the problem, thus giving up the fight before the battle is barely engaged. In this regard, I am reminded of the story of the little boy who woke up one morning to discover thousands of starfish washed up on the beach. As he walked along, he began to pick up some of the starfish and throw them back into the water before they would die. Watching him, a man came over and asked the boy, "Why bother throwing a few of them back when there are still so many left on the beach which you will never be able to save? What difference does it make?" The child answered, "To that one starfish, it makes all the difference in the world!"

The same point was made a bit more philosophically by Dag Hammarskjold, the former General Secretary of the United Nations: "It is more noble to give yourself completely to one individual than to labor diligently for the salvation of the masses." This is an important point to remember for attorneys who spend the vast majority of their time in the everyday practice of law dealing with clients and other attorneys on a one-on-one basis.

Consequently, the breadth of our impact in helping restore civility in the legal profession is directly related to the depth of fidelity with which we adhere to the observance of ethics in the everyday practice of law. As the religious leader David McKay has suggested, "The greatest battles of life are fought . . . in the silent chambers of the soul."

III. ETHICS AS "PRINCIPLE-CENTERED"

May I suggest that the most effective way to adhere to the observance of ethics in the everyday practice of law is not by acquiring some special technique or gimmick, but by learning to live a principle-centered life. In his best-selling book, The Seven Habits of Highly Effective People, Stephen R. Covey describes how his research took him back through 200 years of writing about success. In the course of his study, he noticed that

[M]uch of the success literature of the past 50 years was superficial. It was filled with social image consciousness, techniques and quick fixes—social band-aids and aspirin that addressed acute problems and sometimes even appeared to solve them temporarily, but left the underlying chronic problems untouched to fester and resurface time and again.10

7 Stephen R. Covey, The Seven Habits of Highly Effective People 201 (1989) (quoting Dag Hammarskjold).
8 Id. at 294 (quoting David O. McKay).
9 Id. at 18.
10 Id.
Covey describes this approach as being based on a “Personality Ethic” which sees success as “a function of personality, of public image, of attitudes and behaviors, skills and techniques, that lubricate the processes of human interaction.” According to Covey, some of this philosophy was couched in neat little maxims such as, “Your attitude determines your altitude,” “Smiling wins more friends than frowning,” and “Whatever the mind of man can conceive and believe it can achieve.”

The problem with this approach is that public relations techniques and insincere attempts to convey a positive mental attitude can clearly be manipulative and even deceptive. As others begin to see through our duplicity, the techniques begin to lose their effectiveness and even become counter-productive.

In contrast to the “Personality Ethic,” Covey discovered that

[A]lmost all the literature in the first 150 years or so [of our country’s history] focused on what could be called the Character Ethic as the foundation of success-things like integrity, humility, fidelity, temperance, courage, justice, patience, industry, simplicity, modesty, and the Golden Rule. Benjamin Franklin’s autobiography is representative of that literature. It is, basically, the story of one man’s effort to integrate certain principles and habits deep within his nature. The Character Ethic taught that there are basic principles of effective living, and that people can only experience true success and enduring happiness as they learn and integrate these principles into their basic character.

Covey notes that there are several areas of focus on which our lives can become centered, such as one’s spouse, family, money, work, possessions, pleasure, friends, enemies, church, and, of course, self. Whatever takes root at the center of our lives will be the source of what Covey calls our “life support factors,” namely, security, guidance, wisdom and power. The ideal, according to Covey,

is to create one clear center from which you consistently derive a high degree of security, guidance, wisdom and power . . . .

By centering our lives on correct principles, we create a solid foundation for development of the four life-support factors.

Our security comes from knowing that, unlike other centers based on people or things which are subject to frequent and immediate change, correct principles do not change. We can depend on them.

11 Covey, supra note 7, at 19.
12 Id.
13 Id.
14 Id. at 18.
15 Id. at 111-18.
16 Covey, supra note 7, at 122-23.
Principles don't react to anything. They don't get mad and treat us differently. They won't divorce us or run away with our best friend.

Principles are deep, fundamental truths, classic truths, generic common denominators. They are tightly interwoven threads running with exactness, consistency, beauty, and strength through the fabric of life.

The wisdom and guidance that accompany principle-centered living come from correct maps, from the way things really are, have been, and will be. Correct maps enable us to clearly see where we want to go and how to get there. We can make our decisions using the correct data that will make their implementation possible and meaningful.

The personal power that comes from principle-centered living is the power of a self-aware, knowledgeable, proactive individual, unrestricted by the attitudes, behaviors, and actions of others or by many of the circumstances and environmental influences that limit other people.

The sturdy reliability of principles is exemplified in the following story:

Two battleships assigned to the training squadron had been at sea on maneuvers in heavy weather for several days. The visibility was poor with patchy fog, so the captain remained on the bridge keeping an eye on all activities.

Shortly after dark, the lookout on the wing of the bridge reported, "Light, bearing on the starboard bow."

"Is it steady or moving astern?" the Captain called out.

Lookout replied, "Steady, captain," which meant we were on a dangerous collision course with that ship.

The captain then called to the signalman, "Signal that ship: We are on a collision course, advise you change course 20 degrees."

Back came a signal, "Advisable for you to change course 20 degrees."

The captain said, "Send, I'm a captain, change course 20 degrees."

"I'm a seaman second class," came the reply. "You had better change course 20 degrees."

By that time, the captain was furious. He spat out, "Send, I'm a battleship. Change course 20 degrees."

Back came the flashing light, "I'm a lighthouse."

We changed course.

17 Id.
18 Id. at 33 (quoting Frank Koch, Pulling Rank, U.S. NAVAL INST. PROC. Nov. 1987, at 81.)
This story helps us see that our grasp of truth and reality is affected by our limited perception. That is why principles are so important: “Principles are like lighthouses. They are natural laws that cannot be broken.”

Practicing law according to a principle-centered approach gets to the heart of our discussion of “Ethics in the Everyday Practice of Law.” For, when we speak about ethics, that is, your personal ethos, we are talking about your personal credibility, the faith people have in your integrity and competence; and living a life of integrity means that “our daily habits reflect our deepest values.”

IV. THE TEN COMMANDMENTS AS PRINCIPLE-CENTERED ETHICS IN LAW

Stephen Covey suggests in his book that we can be highly effective people by living according to seven habits. While Covey’s approach offers a solid basis for leading happy and successful lives, I would like to suggest that we have an even more fundamental set of principles in the Judeo-Christian tradition that has withstood the test of time. Those principles are depicted in a powerful work of art by Michelangelo in the church of St. Peter in Chains in Rome. It is a sculpture of Moses with the Ten Commandments. My feeling is that if the Ten Commandments were good enough for Moses and his followers for the last 3250-some years, they should be good enough for us. Even Christ’s summation of the greatest commandments—“Love God with all your heart, mind and strength; and love your neighbor as yourself”—did not repeal the ten commandments, but provided the underlying rationale and purpose for obedience to them. Moreover, if we believe to some extent that ethics is a matter of discipline in following a set of principles, let us remember that the root of the word “discipline” is “disciple,” and the fidelity of our discipline will rest on the loyalty with which we are faithful disciples of whoever it is we follow, whether that be Moses, or Jesus, or both, or some other.

Since most of us learned the Ten Commandments when we were children, the tendency may be for us to remember them through the eyes and ears of children. Perhaps we have even relegated them to some portion of our memory that retains a faint cognitive awareness of something we learned many years ago, but does not loom large in our present conscious-

19 Id. at 33.
20 Id. at 298.
31 Covey, supra note 4, at 11. The seven habits are: 1) Be proactive (principles of personal vision); 2) Begin with the end in mind (principles of personal leadership); 3) Put first things first (principles of personal management); 4) Think win/win (principles of interpersonal leadership); 5) Seek first to understand, then to be understood (principles of empathetic communication); 6) Synergize (principles of creative cooperation); and 7) Sharpen the saw (principles of balanced self-renewal). Id.
ness. Consequently, I would like to offer some brief reflections on the Ten Commandments from the perspective of an adult attorney. I further suggest that in reflecting on them in this way, they can serve as the basis for a principle-centered ethics in law.

1. I, the Lord, am your God, who brought you out of the land of Egypt, that place of slavery. You shall love no other god but me.

Notice the introduction to the first commandment: God is identified as the one who brought the Jews out of slavery. That is why we must love Him alone as our God. If we make anything else our god, we subject ourselves to the condition of slaves.

In other words, in the practice of law, if our hearts are set ultimately on billable hours, income, clout, connections, powerful positions, prestigious offices, or work itself, we allow ourselves to be caught in a vicious trap. Since there's always more money to be made, more power to be garnered, and another big-shot's favor to be curried, our very freedom becomes shackled to our own distorted priorities. This is not to say that we must shun the means which are necessary and appropriate to practice law in the modern world. However, this first commandment challenges us to identify the driving forces which captivate our motivations and impel our actions.

For example, a local newsmagazine featured a profile of a prominent Chicago law firm renowned for its consuming and relentless approach to the practice of law. A partner at this firm was quoted as saying that he could not remember how many of his children's birthday parties he has missed because of work. He did not say this regretfully, but meant it as a boast! The press of work and professional duties may at times cause us to miss family occasions, but when we take pride in such unfortunate conflicts, then it is time to re-examine the god whom we serve.

In contrast, the scriptures describe the true God in terms of wisdom, justice, mercy, compassion, patience, kindness, forbearance and love. If these are the qualities we keep uppermost in our minds throughout the daily practice of law, then we are serving the one true God. A lawyer who persuades his or her own client to treat an adversary fairly, or helps two people reconcile their differences and walk away as friends, or at least no longer as enemies, has learned the difference between the lawyer as a hired gun and the lawyer as a minister of justice.

2. You shall not misuse the name of the Lord your God.

I am frequently amused by people who curse or swear in my presence, forgetting that I'm a priest, or oblivious to my presence, and then upon becoming aware of me, apologize profusely to me for their profanity. I am a hockey player, a runner, and a weightlifter; I have been in a lot of locker rooms; I have heard plenty of strong language and I have used a bit of it myself in the heat of battle. So I do not think the use of "dirty words" is itself a matter to be scrupulous about. However, it is not only
the four-letter words banned by the FCC (Federal Communications Commission) that can do great harm to our fellow human beings. The harsh tone of our voice, the decibel level when opponents are screaming at each other, the well-placed cutting word at a time of strategic vulnerability, the unfounded impugning of a person's reputation, are all ways that we as attorneys offend against the second commandment.

3. *Remember to keep holy the Sabbath day.*

In its most literal form, this commandment says that you should make sure you worship God in your church or synagogue and take a day off every seven days. That in itself is not bad advice. If we never take time to pray or reflect, to rest and refresh ourselves, if we work seven days a week, then our priorities are askew and trouble will eventually manifest itself in one or another area of our lives, such as our health. Since Sunday is a day of work for me as a priest, I try to take a day off during the week. On a daily basis when so much of my schedule is filled with meetings and phone calls, I try to get up early (around 5:30) to take advantage of at least a half hour of prayer and meditation alone. In addition, I find in the course of the day that it helps for me to escape the office for a run along the lakefront. This helps clear my mind and sometimes I use the solitude as an opportunity for prayer as well. Besides the physical benefits, you may find that some time for meditation and exercise help you deal with the pressures and stresses of our profession.

Beyond the apparent meaning of the Sabbath as a day of prayer and rest, however, I would like to suggest a further dimension of this commandment. For "to keep Holy the Sabbath day" means that we not only do something special on the seventh day of the week, but the rest of the week must be lived in a way that does not contradict or bring shame upon what we profess on the Sabbath. Thus, a person could go to church regularly every Sunday, but if the rest of the week is marked by behavior in stark contrast to what is professed on Sunday, then the Sabbath is a mockery and has by no means been kept holy.

In his booklet, *The Spirituality of Work: Lawyers*, William Droel of the National Center for the Laity argues for the need to see the connection between faith and the practice of law:

> A spirituality of work suggests to the lawyer that God is present in the world and in the practice of law. Thus it encourages us to look for God and respond to God amid our daily chores and in all the legal institutions and systems: in the office, in the courtroom, the library, and the jail. It will regard work, by itself, as contributing to the spiritual life . . . . .

> In other words, a spirituality of work encompasses the lawyer's response to the task at hand—when that lawyer responds professionally, with wholeness, compassion, dedication, knowledge, excellence and a passion for justice.
Professional competence, the key ingredient to the successful practice of law, is not divorced in any way from the spirituality of work....

Of course, professional competence must be surrounded by virtues: patience, compassion, wisdom, and even ambition combined with humility. Without competence, however, all the good intentions of a particular lawyer will be misplaced.**

As attorneys, the Third Commandment is best observed when we are able to see and make this connection between the faith we profess in church or synagogue and what we do the rest of the week in our everyday practice of law.

4. *Honor your father and mother.*

Learned as children, this commandment most probably speaks to our minds in our childhood context of being obedient to Mommy and Daddy. Even as adults, we have a duty to continue to respect and care for our parents. However, I would like to suggest that this commandment also speaks to us in a wider sense as attorneys, because the essential principle is respect for authority. When we are sworn in as attorneys, we pledge to uphold the laws and Constitution of the United States and the State of Illinois. As officers of the court, we have a special duty to respect officials in positions of authority. This is especially challenging when we do not respect the officeholder as a person because of some fault or personal deficiency. Nevertheless, it is the authority of the officeholder that continues to demand our honor and respect.

5. *You shall not kill.*

While it is not unheard of for an attorney to kill another human being physically, I would hope that that temptation is not a serious problem for anyone here in this room. If so, please see me privately; we need to talk! Rather, most of us confront this commandment in much more subtle ways. Anger is appropriate at times in the face of wrongdoing, but if misplaced or inappropriate anger can kill even the best of friendships, it can certainly shatter any semblance of civility between attorneys and clients. Another way that an attorney can figuratively seek to drain the life out of an opponent is through unnecessary discovery and pleadings designed to bury the opponent in paper and legal fees.

6. *You shall not commit adultery.*

Thanks to the television character Arnie Becker, the divorce lawyer on “L. A. Law,” the hottest question in legal ethics today is: “When can a lawyer have sex with his or her client?” The divergence in answers one might receive in response to this question is due to the fact that the issue of sexual morality is very confused and very confusing in contemporary

society. The impression gleaned from the so-called “sexual revolution” of the 1960s and 70s, from much of popular psychology, and from many Hollywood movies and even prime-time television is that if you are not having sex as frequently as possible with every available partner, there must be something wrong with you! Nevertheless, other indicators suggest that our society’s ethical standards in the area of sexuality are not quite as libertine as some might have you believe. The intense focus on sexual harassment in the Senate Judiciary Committee’s Supreme Court nomination hearings, recent proposals for ethical rules restricting attorneys from having sex with their clients, and changing sexual behavior in light of increased awareness about sexually transmitted diseases, especially AIDS (Acquired Immune Deficiency Syndrome), indicate that there are still some rather stringent societal precepts and restraints in the area of sexual morality. I challenge anyone who thinks that the Sixth Commandment is an outdated and obsolete remnant of a bygone era to visit our crowded divorce courts and ask the petitioners how many are there because of the infidelity of their spouse. If adultery is an accepted part of life in twentieth century America, why are so many husbands and wives still unwilling to share their spouses with others? Are they old-fashioned curmudgeons and biddies clinging to archaic social mores? I do not think so. On the contrary, I believe that infidelity in marriage is just as hurtful, outrageous, offensive and unacceptable in our day and age as it was when Moses first carried those tablets down from Mount Sinai 3250 years ago.

Therefore, if you are married, my ethical advice for you in the area of sexual morality is concise: be faithful to your spouse. If you are not married, do not be too quick to consider yourself free to do as you please. The underlying premise of the Sixth Commandment is based on the principle that the ideal, and indeed, safest, context for sexual expression is within the sanctity of marriage, that is, a relationship that is life-giving, love-making, permanent, mutual and exclusive. Perhaps that sounds simplistic, but I am not aware that the tablets Moses brought down from the mountain had any footnotes!

7. You shall not steal.

There once was a lawyer who died and went straight to heaven. At the pearly gates, St. Peter welcomed him with exuberant praise, proclaimed the deceased barrister to have been the hardest working attorney in the history of the human race. Embarrassed and a bit baffled by this accolade, the lawyer suggested to St. Peter that there must be some mistake; sure, he was hard-working, but the hardest working ever in history? He could not accept that with a clear conscience. St. Peter looked over his computer printout and exclaimed, “Oh no, there’s no mistake; we just added up your billable hours!”

This joke was first told to me by a non-attorney, which suggests that there is a problem at least in perception, if not in reality. In the daily
practice of law, the temptation to steal may take the rather subtle form of overstating one’s billable hours or exaggerating the amount of damages claimed. It’s not as overt as walking into a bank wielding a gun, yet may certainly be more effective and more harmful.

8. You shall not bear false witness against your neighbor.

The proscription against bearing false witness goes not only to the question of honesty, but also integrity. Honesty means making sure our words conform with our actions. Integrity refers to being an integral or whole person, that is, making sure our actions conform to our words. We give “witness” to our lives by both our words and our actions.

9. You shall not covet your neighbor’s wife.

In his poem, “The Spur,” W. B. Yeats wrote:

You think it horrible that lust and rage
should dance attention upon my old age;
They were not such a plague when I was young;
What else have I to spur me into song?23

I guess it is not so horrible for our imaginations to dance attention upon us, or spur us into song, regardless of our age. Yet it is not the fanciful fantasy that is the object of this injunction, but the obsessive preoccupation harboring evil and lustful intent that offends, even if never acted out.

10. You shall not covet your neighbor’s goods.

According to Billy Graham, “Envy takes the joy, happiness, and contentment out of living.” Jean Vanier makes the following point: “Envy comes from people’s ignorance of, or lack of belief in, their own gifts.” The desire to have something that belongs to another, whether that be wealth, position, personality, friends, or good looks, points out an inherent dissatisfaction with one’s own qualities and possessions. Thus, we sin doubly, for we not only sell ourselves short, but we also deprive those around us of the full extent of our own gifts and talents. We may not have a corner office, or a nice view of the lake, or a location in a high-rent district, but when a client engages our professional services, we owe them the best that we have got.

These reflections hardly constitute an intricate analysis of the Rules of Professional Conduct, but even if you do not agree with all of my applications, I hope that through them you will have found a roadmap for a principle-centered approach to ethics in the everyday practice of law.