

# To Thine Ownself — and Your Clients — Be True

By

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*"This above all, -- To thine own self be true ...."* Hamlet, Act I, Scene 3.

A lawyer's life is a multifaceted set of responsibilities. These include fulfilling the requirements of employers, clients and courts; responding to the conduct of opposing counsel; and juggling time to meet the needs of our families and the billable quotas that fund our paychecks. The pressures from these relationships appear external, but lawyers live these pressures inside themselves. It is from the inside that we can put some measure and balance to these relationships by choosing how to conduct ourselves in each relationship. This article presents one model to guide our most important professional relationship — that between attorney and client.

The model offered here is based on the famous line from Shakespeare's *Hamlet*: That being true to ourselves is the best way to be true to others. The premise here is that making this intention central to our actions can eliminate conflicts that seem irreconcilable. More importantly, making the intention to act well our essential focus, and then acting from that point with the right qualities, will develop a mature vision that can better serve clients and enhance the value of our lives as lawyers, and otherwise.

During an early scene in *Hamlet*, the king's advisor, Polonius, talks with his son, Laertes, who is about to go off to college in France. Polonius is not the best of men, but he tries to distill what is best in himself as points of wisdom to give his son. More than money or skills, it is this wisdom that is the most valuable thing that he can give his child to use in the world. One by one, Polonius offers Laertes these family gems as a concise series of "precepts." As his final gift, Polonius hands Laertes the crown jewel: "This above all, — To thine own self be true — And it must follow, as the night the day, Thou canst not be false to any man."

Exploring what is stored in this single line lays out the potential nature of how attorneys can relate to clients.

*"This above all ...."*

Before the quoted phrase, Shakespeare lists a number of admonitions from Polonius to Laertes. These include such famous maxims as "Give every man thine ear, but few thy voice," and "Neither a borrower, nor a lender be ...." It is the advice to be true to oneself, however, that is "above" all of the other courses of action.

While Shakespeare uses the word "above," the nature of being true to oneself can be viewed from another perspective. If being true to oneself is the fundamental quality that anchors a person's ability to follow all of the other wise courses of action, then it can be seen as the cornerstone of the building, rather than its apex.

*"Thou canst not be false to any man."*

The object of the advice to be true to yourself is not to be false to others. This is an astounding point: Do not act to gain something for yourself, but act in this exceptional way so that you can do right by others. In the context of lawyer-client relations, the lawyer's truthfulness to himself or herself is a means to achieve truthfulness with the client.

*"To thine ownself be true, And it must follow, as the night the day ...."*

There is no philosophical or theological exposition that follows, but a few simple points that hopefully can be useful to attorneys.

Being true calls for more than being honest. We talk about people being "honestly mistaken." A person working in a windowless office may believe, and tell someone else in the office, that it is sunny outside when in fact it is raining. This person would not be lying if they really believed it was sunny; but they would not be telling the truth.

Being true carries with it the need to pursue higher standards. In the simple example above, this would mean that the person in the closed room would have recognized that he or she really did not know if it was sunny or not. It would call for either finding out what was actually happening outside, or simply saying they believed it was sunny, but they were not actually sure what was happening at that time.

Being true does not encompass the idea that people should follow every impulse that comes to their hearts, whatever the nature or source of that impulse. Someone who is a scoundrel, and accepts the fact that he or she is a scoundrel, cannot be "true" to themselves by following the mandates of their selfish nature. If scoundrels choose to act like scoundrels, they will inevitably be false to others. Their selfishness will at some point require a lie to

achieve their ends, which will always be primary over anyone else's ends — including a client's.

If a person is true to himself or herself, then it is as certain as the night following the day that such a person could never be false to another. The proposition that being true will inexorably result in not being false to others shows the type of “self” that can be the measure for our actions. Following Lincoln, we can look to “the better angels of our nature.” The exhortation to be true requires that our best “self” be the reference point for choosing a course of action.

Clients and attorneys should not fear that being true requires that an attorney be overly kind or soft towards opponents; or that he or she has to act with a demure courtesy to an opponent that shows none. In being true to himself or herself, a lawyer may have to take forceful actions that could humiliate an opponent. The lawyer following this model, however, does not exercise qualities that would delight in humiliating someone or seek humiliation as an end in itself. The Lincoln who talked about “the better angels of our nature” sent his nation into a bloody war when he believed it right and necessary; but he did not diminish the clarity of his resolution or the profound strength of his determination by allowing malice into his character or revenge to fuel his sense of purpose.

*Examples of knowing falsehood.*

- Listening to the client's description of a case at the initial interview, recognizing that the case is a loser and telling the client that the attorney can win the case.
- Telling the client that the lawyer is familiar with an area of the law in which the lawyer has little or no experience.

In these examples the lawyer is false to the client, probably for the purposes of getting the case and pushing litigation for the lawyer's personal profit. The lawyer is not true to himself or herself because the self they are serving is constituted by a mix of greed and lies. Put another way, they are burying their better self to make money by any means.

To the extent this reflects a corrupt attitude, there is not too much that can be done. If these falsehoods are simply the result of a fear that there will not be enough business, however, then there is some hope. In his *Notes on a Law Lecture*, Lincoln states: “Discourage litigation. Persuade your neighbors to compromise wherever you can. Point out to them how the nominal winner is often a real loser — in fees, expenses and in waste of

time. As a peacemaker the lawyer has a superior opportunity of being a good man. There will still be business enough....”

He is encouraging lawyers who doubt that fair action will result in financial success to take a chance on acting honorably. Lincoln believed that this conduct would not go unnoticed or unrewarded, and business would come. In short, for those without the experience, he called for a leap of faith. The reward for this leap is being able to live with oneself and to do what is right by others.

Lincoln goes so far as to say that a person considering the law should “resolve to be honest at all events; and if in your own judgment you cannot be an honest lawyer, resolve to be honest without being a lawyer. Choose some other occupation, rather than one in the choosing of which you do, in advance, consent to be a knave.”

*Lawyers who are false by failing to recognize their limitations.*

- A busy lawyer takes a case and fails to file a complaint before the statute of limitations runs.
- In responding to a motion to dismiss, the lawyer fails to research the law thoroughly, misses an argument that would have defeated the motion and the complaint is dismissed.
- The attorney fails to prepare thoroughly for an important deposition and information critical to the case goes undiscovered.

In these types of examples, the lawyers probably are not lying to their clients or consciously trying to deceive. Rather, they are being false by failing to give their best effort and do the job as it should be done. In the language of the law, these lawyers are failing to be zealous advocates for their clients. Such lawyers are not being true to themselves because they are either being lazy or they are failing to recognize that they do not have the time to do the work properly. The resolution is simple: either do not take the work, or make the time to do it right.

*Even hard-working lawyers with good intentions can be false to their clients and themselves.*

- A lawyer thoroughly investigates and develops all of the facts and background in the case. There is no more that could be done by any other attorney.

Looked at objectively, the overwhelming weight of the discovered facts leads to a fairly obvious conclusion, unfavorable to the lawyer's case. The lawyer does not bring this to the client, or give it enough weight because the lawyer simply cannot believe it or objectively accept its meaning.

- A lawyer does a great job in preparing the case for trial, but never gives full consideration to settlement possibilities.
- A lawyer prepares a lengthy and well-researched motion to dismiss a complaint in federal court. The motion covers every possible argument with power and clarity. It is obvious, however, from the face of the complaint, that the case is going to be barred by the statute of limitations even if the Plaintiff could prove the elements of every claim. This reduces the importance of making detailed arguments about the failings of each such claim since they will be barred in any event.

In each of these examples, the lawyer shows his or her legal skills in developing the case, preparing for trial and researching and setting forth legal arguments. Looked at within those parameters alone, the lawyer may be viewed as excelling. Looked at in a broader context, i.e. by the measure of what the final economic outcome of the case will be for the client, the lawyer may have missed the boat. In these examples, the lawyer is false to the client by not telling the client the realities about the likely outcome of the case; by failing to seek other possible alternatives that could serve the client's ends as well or better than going to court; and by failing to achieve the same ends for the client with less splendor, but also at much less expense.

In this set of examples, the flaw in the lawyer is not greed or laziness, but narrow-mindedness and hubris. In a young lawyer, it could simply be callowness; they do not yet grasp that the goal of litigation is not a show of skills learned in law school, but in doing what is necessary to get the best result for the client.

The lawyer can overcome these flaws by widening his or her view of what it is to be a lawyer. Most simply, by realizing that the client's needs come first, the lawyer will understand: the necessity of keeping the client informed of the good and bad in a case; the need to look for solutions outside the courtroom if possible; and the need to see the economic and business effects on the client that litigation may create.

. *When capable lawyers wrestle with the choice to be or not to be true.*

There is another, though not necessarily final, category of attorney conduct worth examining. This involves the lawyer who understands the strengths and weaknesses of the client's case, has full knowledge of the best way to approach the case and the client's range of interests, and still wrestles with proceeding truthfully because of some desire to do otherwise. It involves a person who is conscious of the right course, but is being pulled in the wrong direction.

Another piece from literature offers some insight on this dilemma.

In *The Maltese Falcon*, private detective Sam Spade is retained by a client whose name and stories change like a chameleon on scotch-plaid. He finally comes to know her as Brigid O'Shaughnessy, and finally comes to realize that she has consistently lied to him, led him into various traps, put his life at risk and murdered his partner with perfect coldness for her relatively petty ends. On the other hand, Spade has fallen in love with Ms. O'Shaughnessy, and if he turns her over to the police he will lose her.

In the climactic scene, with the police on the way, Spade confronts Brigid with the facts that expose her greed and treachery. Spade tells her that he is going to turn her in to the police. He says coolly that he hopes she will not hang. She challenges whether Spade has the heart to do this because of his feelings for her. He tells her time and again, "I won't play the sap for you," but he waivers. As she repeatedly challenges Spade's determination and ability to turn her in, he responds with different layers of explanation: if she does not go to jail, then he will take the fall; when a man's partner is killed, he's supposed to do something, whether he liked his partner or not; it will be bad for all detectives if one gets murdered and the murderer escapes; and he could not trust her or know that she would not shoot him someday.

She challenges it all and he waivers again. He then foregoes all his reasoning and tells her why he will not let her escape before the police arrive: "I won't because all of me wants to — wants to say to hell with the consequences and do it — and because ... you've counted on that with me the same as you counted on that with the others." She tries to persuade him again and he says one last time, "I won't play the sap for you." She is in his arms when the police show up, but he turns her in for the murder.

What Spade would have done had the police come fifteen minutes later was left unclear; however, his final declaration makes a valuable point for attorneys. In determining the conduct of a case, lawyers always have to look at what the consequences of our actions will be. And the point here, unlike the *Maltese Falcon*, is how to deal with our own inclination to act falsely toward our clients.

To do this, attorneys have to exercise the necessary qualities and professionalism that allow for understanding the greatest breadth of what the consequences of our actions could be. We can never properly say "to hell with the consequences" for the client, nor choose an easier course for ourselves at the client's expense. Moreover, each time we choose the right action, we cultivate the ability to be true to ourselves and our clients. In the long run, the lawyer who strives over his or her career to be true to himself or herself, no matter how difficult, should come to recognize over time that this course is one that is in the client's best interest.

*Is the Model as Offered Worth our Effort and Consideration.*

The usual interpretation of Polonius' series of admonitions to Laertes is that, at best, he is a pompous windbag spouting platitudes that lack real meaning for his or his son's life. At worst, he is seen as a hypocrite whose chief work actually is perfecting the art of duplicity. Some even read the father's "precepts" as guides solely geared to promote his son's station in life. If Laertes does a really good job of it, no one will ever catch on that he has no genuine interest in anyone but himself; and he will not be discovered as "false to any man." Thus, when the words to be true to oneself are put in the mouth of a windbag, hypocrite or self-promoter, they can become empty, cynical or inverted. They are not only detached from a way of life that is intermingled with their nature, but may be attached as camouflage to a contrary way of life.

All of these readings mock the model offered above. They also reflect experiences that most of us have had as lawyers that could make it easy to conclude that these "nice" words have no practical place in the real grit of the lawyering. The question here is whether it is worth the effort, and the risk, to find out if these words can be genuinely intertwined with our lives as lawyers. Do the shaded echoes of the language coming from Polonius have a real and legitimate source in actual life?

We can take an example from our legal history: Justice Benjamin Cardozo. Cardozo was a towering legal figure. He is also considered the closest thing to a saint that we have in the law. By contrast, Cardozo's father, himself a judge and apparently a person of intelligence and standing, was one of Boss Tweed's Tammany Hall cronies who resigned from office in scandal and disgrace. He was one of those in a special position to undermine faith in the words of justice that he purportedly passed on others, and to divide those words from their life.

While the son Cardozo was not in fact a perfect man, and there seem to be some scholars who verge on despising him, he genuinely seems to have tried to reach for the highest qualities of character in carrying out his work. As captured by the great Judge Learned Hand in his eulogy of Cardozo: “He was wise because his spirit was uncontaminated, because he knew no violence, or hatred, or envy, or jealousy, or ill-will. I believe that it was this purity that chiefly made him the judge we so much revere; more than his learning, his acuteness, and his fabulous industry.”

For lawyers, or anyone, actually working Shakespeare/Polonius’s words into life is no small thing. It requires conscious and persistent effort. Counsel can develop this nature of being true to himself or herself by striving to make the right choices and to take the right actions each day, in things large and small. Further, as the time and effort spent on beneficial qualities and actions increases, the pull of our selfish, narrow-minded and venal qualities will decrease.

The fact that it was Cardozo’s qualities and fundamental character as a person, rather than his acumen and mental skills, that primarily won him greatness as a judge is worth our prolonged reflection. The fact that such people really exist should keep us from succumbing to the notion that practicing such qualities and actions is a quaint idea to be secretly scoffed at, or a wasted effort to reach an unattainable goal. If we try, we can succeed in becoming true to ourselves and our clients.

The Pennsylvania Lawyer, May/June 1999 (Cover Article)