

More Helpful Advice III

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Abstract: an even further collection of legal anecdotes.

IGNORANCE OF THE LAW

The fact is that there is not and never has been a presumption that everyone knows the law. There is a rule that ignorance of the law does not excuse, a maxim of very different scope and application.

per Lord Atkin, *Evans v. Bartlam* [1937] AC 473

Ignorance of the law excuses no man; not that all men know the law, but because 'tis an excuse every man will plead, and no man can tell how to refute him.

Selden, *Table Talk: Law* (1689)

Everybody is presumed to know the law except His Majesty's judges who have a Court of Appeal set over them to put them right.

Maule J

Lawyer: the only person in whom ignorance of the law is not punished.

Jeremy Bentham (readers doubting the veracity of Bentham's dictum are referred to *Jones v Jones* [1970] 3 WLR 20.)

Everyone is conclusively presumed to know the law, although the ablest courts in the land often find great difficulty and labour in finally determining what the law is.

per Paterson J, *Allen v Allen*, 95 Cal 184 at 199 (1892)

It is ignorance of the law rather than knowledge of it that leads to litigation.

Cicero, *De Legibus*

Ignorance of the law does not prevent the losing lawyer from collecting the bill.

Brandreth, *The Law is an ass* (1984) 58

He says he took the advice of counsel. We suppose from the quality of the advice that he must have obtained it gratis; but, if he paid for it, he might be able to recover damages from his attorney for giving such advice.

per Bleckley CJ, *Treadwell v Beauchamp*, 82 Ga 736, 9 SE Rep 1040 (1889)

Applying that decision, it seems to me that the advice given by these ambulance chasers to Mrs Howell was on a par with the advice given by the works manager to Mr Dodd. Mrs Howell was advised by completely unqualified people that she had no claim in law. That means that she was in ignorance of one of the material facts, namely, that the driver or conductor were negligent and that the bus company were liable in law for the negligence of their servants.

per Lord Denning MR, *Howell v Midland PTE* [1973] 1 Ll Rep 199 at 201 (CA)

MODERN TECHNOLOGY

The original arrangement with the telephone was that an annual rent was paid, but calls were free. When, in due course, a halfpenny charge was levied on each call, one uncompromising barrister sent his clerk on foot to arrange his appointments daily in advance. The clerk, in revolt, arranged all appointments simultaneously on a particular day, ensuring that “two of the crankiest solicitors in Sydney” were among the callers. Suffice to say that in this case the telephone triumphed over parsimony.

A History of the NSW Bar (ed Bennett, 1969) 206

PUBLIC SERVICE

When it was suggested that a certain library should extend the hours during which the public could make use of it, the librarian objected on the ground that “readers interfere with the work of the library.” That is the attitude of the courts and judges today. They give no signs of appreciating that they exist as public servants to serve the public. Everything must be subordinated to their convenience.

Parris, *Under my wig* (1961) 186

GREATER LOYALTY HATH NO ATTORNEY

JENKINS, LONNIE (white). 1931. Michigan.

Jenkins was convicted of first-degree murder and sentenced to life imprisonment for killing his wife. Initially, a coroner’s jury found that Mrs Jenkins had committed suicide by shooting herself. Jenkins was later arrested, charged with murder, and convicted largely because a teenage girl testified that she had forged the wife’s suicide note at Jenkins’s instigation. Subsequent investigations by Jenkins’s dedicated daughter revealed that the handwriting was indeed her mother’s, however, and that the testimony against her father had been perjured. Jenkins’s attorney had conducted a prior investigation also showing Jenkins’s innocence. In a macabre twist of fate, the attorney shot himself in the head while presenting a simulation of Mrs Jenkins’s

suicide. In 1940 a motion for a new trial was granted. The prosecutor informed the court that a mistake had been made, and Jenkins was released after nine years in prison.

Radelet, Bedau and Putnam, *In Spite of Innocence: erroneous convictions in capital cases* (1992) 317

JUSTICE TURNED BOTTOM-SIDE UP

Though the Court may order an election *nunc pro tunc* it is beyond the powers of the Court, or of an Act of Parliament, to recall a day that has passed, or to make a thing which happened not have happened.

per Maule J, *Mayor of Berwick v Oswald* (1854) 3 El & Bl 653 at 670

Except in topsy-turvy land, you can't die before you are conceived, or be divorced before you ever marry, or harvest a crop never planted, or burn down a house never built, or miss a train running on a non-existent railroad. For substantially similar reasons ... a statute of limitations does not begin to run against a cause of action before that cause of action exists, i.e. before a judicial remedy is available to the plaintiff.

per Frank J, *Dincher v Marlin Firearms Co*, 198 F 2d 821 at 823 (1952)

The improbable — by definition being not impossible — sometimes does occur.

per Frank J, *Old Colony Bondholders v NY, NH & H Railroad Co*, 161 F 2d 413 at 443 (1947)

... it is always probable that something improbable will happen.

per Bleckley J, *Warren v Purtell*, 63 Ga 428 at 430 (1879)

The Court grants judicial review and relief to the group while refusing it to the individual. So far as I can recall, this is the first time this Court has held rights of individuals subordinate and inferior to those of organized groups. I think that is an inverted view of the law — it is justice turned bottom-side up.

per Jackson J, *Joint Anti-Fascist Refugee Committee v McGrath*, 341 US 123 at 186 (1951)

EARNING THE LOYALTY OF YOUR STAFF

[Justice William O] Douglas could be nice — very nice — Justice Marshall recalled, but most of the time “he was awful rough on his staff.” One time the brethren got a memorandum that said, in effect, “I apologize for the mistake in not having done something on a motion. This was caused solely by the stupidity of my secretary.” The memorandum had been typed by that same secretary, which seemed a terrible thing to

Marshall. He went down the hall to Douglas's chambers to tell her how upset he was at this callousness on her boss's part. She responded: "It doesn't matter to me; I get worse than that. But I love the man. He is a great man."

Justice Brennan confirmed that Douglas's secretaries tolerated a great deal of bad behaviour from him, including frequent bawling outs, firing them one minute and rehiring them the next.

He shall not pass this way again: the legacy of Justice William O Douglas (ed Wasby, 1990) 42

LEGAL EDUCATION

When Robert Hutchins was Dean of Yale Law School, he had a brief conversation with William Howard Taft, then Chief Justice of the US Supreme Court. "Well, Professor Hutchins," said Taft, "I suppose you teach your students that the judges are all fools."

"No, Mr Chief Justice," replied Hutchins, "we let them find that out for themselves."

Adler, *Philosopher at Large* (1977)

At Yale Law School there was the inimitable Thurman Arnold, who led classes in civil procedure. It mattered little what Arnold was formally charged with teaching, because it was the brilliance of his mind and his unique wit that entranced the students. An absentminded genius, Arnold would frequently bring his dog Duffy to class, and threaten to pose questions to the poor creature if the class did not shape up.

Murphy, *Fortas: the rise and ruin of a Supreme Court Justice* (1988) 10

AFFIRMATIVE EMPLOYMENT ACTION

The perennial problem soon arose: the most qualified individuals, for the most part, were Jews. [Harold] Ickes maintained that Jews did not predominate in the entire Bitumenous Coal Division, but only on its legal staff, and he defended their presence there. His "principal difficulty", the Secretary said, was finding good Gentile lawyers to carry on the legal work of a division that addressed a greater variety of legal issues than any other sphere of government except the Department of Justice. "What can one do if he wants legal ability and those who possess it and who offer themselves are preponderatingly Jewish?" Ickes replied to someone who had asked him how many Jews the Coal Division employed. "Even so, I try to keep a good balance except among my legal staff."

Fortas worried about balance too. After Kreeger hired a group of Jewish law review men from Ivy League schools, Fortas asked to see him. “It doesn't matter to me, [and] it probably doesn't matter to the Secretary of Interior, but could you hire some Gentiles?” Fortas requested. Kreeger promised to do his best. He soon found a blue-eyed, blonde Bostonian named Joseph Dunn. Though Dunn had not excelled at Harvard, Kreeger decided to lower his standards for an Irish Catholic. Fortas, he recalled, was “so pleased” by the news of the appointment. Then came the Jewish holidays. When Dunn asked whether he would have to work on Rosh Hashanah and Yom Kippur, his colleagues learned for the first time that Dunn was Jewish.

Kalman, *Abe Fortas: a biography* (1990) 68-69

EARNING YOUR FEE

I'm not a potted plant. I'm here as his lawyer. That's my job.

Brendan Sullivan Jr on being told to allow his client (Lt-Col Oliver North) to object for himself if he wished to do so at the Iran-Contra Senate hearing (Sept 9, 1987)

A VIEW FROM THE OTHER SIDE

A barristers' clerk was dining at a window table in a fashionable and expensive restaurant with a colleague when one of his barristers passed by. “There goes one of those bastards,” said the clerk, “who take 95% of everything I earn.”

GIVE AN ACCURATE ESTIMATE OF THE HEARING'S DURATION

Sir William Owen from the bench said, “You have a great pile of books on the table, Sir Julian [Salomons]. Do you intend to cite from all of them?”

“No, not if your honours know the law,” was the reply; and then he added very deliberately, “but I expect I shall have to cite most of them. Yes, I think my argument must run the whole day.”

Blacket, *May it please Your Honour* (1927) 34

CONFIDENCE IN YOUR PROFESSIONAL BRETHERN

Keep a sharp eye on your coat. This place is filled with lawyers.

A *Chicago Tribune* gossip column, reporting a conversation overheard in the cloakroom of the Chicago Bar Association's members-only restaurant

Andrew Heine seemed particularly nervous in his first days at his new home. Partners informed him that they had a million-dollar “key man” life insurance policy on Kumble, lest anything happen to their primary rainmaker. Heine listened with interest.

But he was so accustomed to being disliked that he began to tremble when it was suggested that a similar policy be taken out on his life.

“One of you bastards will push me out the window,” said Heine with no hint of a joke.

Eisler, *Shark tank: greed, politics, and the collapse of Finley Kumble, one of America's largest law firms* (1990) 50

LOOK A GIFT HORSE FROM YOUR COLLEAGUE IN THE MOUTH

Janet Dulles [wife of John Foster Dulles] wore to the inauguration [of President Eisenhower in 1953] an emerald necklace that had been given to her by William Nelson Cromwell. Only when it was appraised after she died nearly two decades later did her children learn that the necklace was a fake. Each generation has its own reasons for remembering Cromwell.

Lisager and Lipsius, *A law unto itself: the untold story of the law firm Sullivan and Cromwell* (1988) 106

SOLICITUDE TOWARDS YOUR OPPONENT’S CLIENT

[The plaintiff] Fraser was asked by the defendant’s counsel, Helenus Milmo: “Do you seriously suggest that an honest law-abiding citizen would think one whit the worse of you because you gave information to the police?”

To this Fraser very frankly replied, “I do not know what would be in an honest person's mind.”

“I appreciate your difficulty,” observed Mr Milmo.

Hooper, *Public Scandal, Odium and Contempt: an investigation of recent libel cases* (1984) 70-71

PRIDE IN YOUR CHOSEN PROFESSION

There used to be a time I'd be embarrassed to tell people what I did for a living. “I do social work among the rich,” I would say.

Chicago divorce lawyer Joseph DuCanto quoted in **69** *ABA Journal* 31 (Jan 1983)

BREAKING THE BAD NEWS GENTLY

“But I've learnt an awful lot of law listening to you, Counsel. And if I go to jail, I'll use my time learning some law. Perhaps I'll become a solicitor when I come out.”

I told him, as gently as I could, that I thought he wasn't dishonest enough.

Abrahams, *Lunatics and Lawyers* (1951) 86

AN OLD SAW

Judge [to counsel]: If what you say be the law, I'd better burn my law book

Counsel: Your Lordship would do well to read them first.

THE JUDGE DESCENDS INTO THE ARENA

An old story tells of a lawyer whose witnesses were constantly being taken out of his hands by an impatient judge, and who grew alarmed at the judge's line of questioning. "Your Honour," he said, "I have no objection to your trying my case for me — but for God's sake don't lose it!"

Mayer, *The Lawyers* (1967) 498

AN EVASIVE DEFENDANT

Engelbert Humperdinck was a difficult party to serve process upon in a suit initiated by a star-struck young woman who alleged that he was the father of her child.

According to the plaintiff, Humperdinck's *modus operandi* was to select an attractive girl in the first few rows of the audience at his concerts and invite her up onto stage with him and thereafter to the privacy of his dressing room.

The plaintiff's lawyer said that "private detectives tried for months to serve [the] court papers." They finally hired a pretty girl to sit in the front row of a Humperdinck concert. When he invited her on stage she handed him a bundle of red roses with the green court papers wrapped around the stems.

"You should have seen his face when he realised what was happening," said private detective Jim Sarno. "It sure spoiled his song."

The Melbourne *Herald* (March 17, 1979) 3

FAMILY LAW

She cried — and the judge wiped her tears with my chequebook.

Multi-married Tommy Manville describing one of his divorces

RESPECT YOUR DEPARTED COLLEAGUES

One high ranking judge tells of a time when he arrived late at a funeral service. The first man he saw was Hugo Black, controversial US Supreme Court justice. Black was only present because he was expected to be; in fact, he'd always felt a dislike for the deceased.

The tardy guest tip-toed over to Black and asked him, "How far has the service gone?"

Black muttered to the other judge, "They just opened for the defence."

ASKING THE QUESTION WITHOUT KNOWING THE ANSWER

On one exceptional and memorable occasion it was a mild and quiet young man giving evidence who had the last word and scored off F E Smith:

“Whom did this man marry?”

“A woman.”

“Don’t be stupid. Did you ever hear of anyone who didn’t marry a woman?”

“Yes, my sister married a man.”

TASTEFUL DECORATION OF YOUR CHAMBERS

At a time when the existing standard of law office decor was roll-top desks and cracked leather sofas, Dulles preferred the elegance of wall-to-wall carpets and a winding staircase connecting the floors. One of the partners of Davis, Polk, Wardwell, Gardiner and Reed came over and commented, impliedly comparing the decor to a call house, “It’s very nice; I might stay for a drink, but I don’t think I’ll go upstairs.”

Lisager and Lipsius, *A law unto itself: the untold story of the law firm Sullivan and Cromwell* (1988) 106

ANOTHER VIEW FROM THE OTHER SIDE

When I was at the Bar I’m bound to say that I found some judges extraordinarily wooden-headed. I had to say the same thing over and over to them. Now I’m on the Bench I can’t understand why counsel are always repeating themselves.

Mr Justice Clavell Salter

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