From Model Rules to Role Models: Three Legal Lives

National Association of Attorneys General
The Origins of this Presentation

• The Model Rules represent a lowest common denominator, not our highest ideals

• Think like a lawyer, act like a professional

• The role of moral courage and physical courage

• Most of the challenges we face as lawyers are ethical or EQ challenges, not substantive or IQ challenges
What is the Most Difficult Part of Being a Lawyer?

- Judgment in the absence of experience
- Endurance
- Grade differentials
- Obnoxious personality (yours and the client’s)
- Role playing
- Clients who do not seek or follow advice
- Doing the right thing the right way
- Too little time
- Incomplete facts
- The Pressure to “Get to Yes”
- Confidence: Too much and too little
- The Challenge you didn’t expect

Most of these challenges have their root in ethics and personality.
How should/might we respond?

• Key Skills
• The Lawyers Tool Kit
• Anticipative Guidance
• Know what you stand for
• Moral Courage
• Know Who Your Role Models Are
The Lawyer’s Tool-Kit: Domestic Legal Tools and Playbooks

Personality Menu
- Pile-driver
- Rope-a-doper
- Nervous Nelly
- Diplomat
- Good cop
- Bad cop

Documents Menu
- Constitution
- Statute
- Presidential Decision
- Presidential Order, Memo, Directive
- Presidential Statement
- Summary of Conclusions
- MOU/MOA
- Interagency Transfer
- Reserves
- Drawdowns

Meetings Menu
- POTUS
- Small Group
- Principals Committee
- Deputies Committee
- Interagency Working Group
- Biweekly
- Lunch, breakfast
- Hallway
- Rollout
Rule 1.13c Army as Client

If a lawyer for the Army knows that an officer, employee, or other member associated with the Army is engaged in action, intends to act or refuses to act in a matter related to the representation that is either a violation of a legal obligation to the Army or a violation of law which reasonably might be imputed to the Army, the lawyer shall proceed as is reasonably necessary in the best interest of the Army. In determining how to proceed, the lawyer shall give due consideration to the seriousness of the violation and its consequences, the scope and nature of the lawyer's representation, the responsibility in the Army and the apparent motivation of the person involved, the policies of the Army concerning such matters, and any other relevant considerations. Any measures taken shall be designed to minimize disruption of the Army and the risk of revealing information relating to the representation to persons outside the Army. Such measures may include among others:

1) Advising the head of the organization that his or her personal legal interests are at risk and that he or she should consult counsel as there may exist a conflict of interest for the lawyer and the lawyer's responsibility is to the organization;
2) asking reconsideration of the matter;
3) advising that a separate legal opinion on the matter be sought for presentation to appropriate authority in the Army;
4) advising the person that the lawyer is ethically obligated to preserve the interests of the Army and, as a result, must consider discussing the matter with supervisory lawyers within the Army lawyer's office or at a higher level within the Army;
5) referring the matter to or seeking guidance from higher authority in the technical chain of supervision, including, if warranted by the seriousness of the matter, referral to the Army lawyer assigned to the staff of the acting official's next superior in the chain of command.
Most of all. . .

Know What You Stand For

• Most importantly, know what you stand for or represent

  • “I, ___, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.” – Oath of Office, 5 U.S.C. 3331

  • The hallmark of a successful national security lawyer is “to move forward with honor, under the law, and to approach the job from the perspective of always leaving the law and Constitution intact, with the nation well taken care of.” - Leon Fuerth

  • “Self-respect cannot be hunted. It cannot be purchased. It is never for sale. It cannot be fabricated out of public relations. It comes to us when we are alone, in quiet moments, in quiet places, when we suddenly realize that, knowing the good, we have done it; knowing the beautiful, we have served it; knowing the truth, we have spoken it.” - A. Whit Griswold
Moral Courage

“A reasoning attitude, which enables a man coolly to stake career, happiness, his whole future, on his judgment of what he thinks either right or worthwhile.”


• Gallipoli, Iraq, Eritrea, Burma
• Military Cross, DSO
• Ability to communicate high ideals in simple language – historian Duncan Anderson
• Normal human being! – Sir Max Hastings
“Now these two types of courage, physical and moral, are very distinct. I have known many men who had marked physical courage, but lacked moral courage. Some of them were in high places, but they failed to be great in themselves because they lacked it. On the other hand I have seen men who undoubtedly possessed moral courage very cautious about taking physical risks. But I have never met a man with moral courage who would not, when it was really necessary, face bodily danger. Moral courage is a higher and a rarer virtue than physical courage.”
The Importance of Knowing Who Your Role Models Are
Frank Johnson
Senate Passes GI Housing Bill, 63 to 14

The Washington Post

Right to His Face

Lieutenant Charges General Failed Duty in Brutality Case

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Knocks Out Windows

Fire Chief W. T. Mallory said the explosion appeared to come from a bomb either thrown against the house or planted there.

It tore up shrubbery, knocked out windows on that side of the house, and dug a hole in the ground 2 feet in diameter.

Mrs. Johnson said she was watching television in an upstairs bedroom in her 2-story brick home when the explosion occurred.

Judge Johnson, who lives a mile away, rushed to his mother's home and surveyed the damage.

BOMB HOME OF JUDGE'S KIN

Target Is Mother of Integration Jurist

[From Tribune Wire Service]

Montgomery, Ala., April 25—An explosion which appeared to come from a bomb tonight damaged the home owned by the mother of a federal judge who has handed down several school integration decisions. No one was reported injured.

The blast occurred beneath a window at the home of Mrs. Frank Johnson Sr., the widowed mother of United States District Court Judge Frank M. Johnson Jr.
Why Care About Frank Johnson?

• High ideals of the Constitution in the simple language of action

• Wherever one serves; he equals you

• Remembered and recognized for his moral courage

• Sources of moral courage
Why Care About John Sparks?

• Doing the right thing, like the law itself, can be measured in small, simple acts and not just dramatic events.

• “Good initiative. . . .”

• The Slim Codicil

• Situational Ethics/Rule Based Ethics
John T. “Jack” Downey
Why Care About Jack Downey?

• It is never too late to make a difference.

• If you think you are having a bad day, ...

• Persons become role models at different times in life. We should never stop looking for examples to follow.

• It is not just what you achieve, but how you achieve it and who you help along the way.

• Self-respect and moral courage ultimately come from within.
“The ideals we cherish, our fondest dreams and fervent hopes many not be realized in our lifetime. But that is beside the point. The knowledge that in your day you did your duty, and lived up to the expectations of your fellow men is in itself a rewarding experience and magnificent achievement.”

- Nelson Mandela
“Self-respect cannot be hunted. It cannot be purchased. It is never for sale. It cannot be fabricated out of public relations. It comes to us when we are alone, in quiet moments, in quiet places, when we suddenly realize that, knowing the good, we have done it; knowing the beautiful, we have served it; knowing the truth, we have spoken it.”

-A. Whitney Griswold

“With a wisdom about himself that comes only to the great of heart, Franklin knew how to value himself and what he did without mistaking himself for something more than one man among many. His special brand of self-respect required him to honor his fellow men and women no less than himself.”

-Dr. Edmund Morgan, Yale history professor