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Dedication Address Address.

Rex E. Lee

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Law school building dedications are historic occasions in the history of any law school, and for any member of our profession, it is an honor to be the dedication speaker. As auspicious as any such invitation would be, however, this one for me has its own unique set of attractions. First, your Dean, whom I consider one of the most astute and effective in American legal education today, has also become a close personal friend. Second, for the past four and one half years, I have followed the progress of this law school rather closely. To some degree, this was because I have had a small portion of my own effort (and even reputation) involved in it.

But the larger reason for my interest was that I saw this school as one of the very few that take their religious roots seriously. This is a place, I believe, where religious affiliation is seen as a positive advantage and not an embarrassment. It is a school whose faculty and administration understand the synergistic benefits to legal education that result from the union of religious values and traditional rigorous American law school training. It is a law school whose faculty has formally declared: "As the School of Law of a Catholic university, this school strives to integrate in a Community of Faith, a sound legal education with a love of God, a respect for His laws and a zeal for the administration of justice."

There are not many such law schools around today. There are far more for whom their religious origins are little more than a formal historical fact with little or no substantive effect on what they teach or what they do. As Dean Tom Shaffer has said: "Sophisticated law in America, like sophisticated American political life, prefers to pretend that morals have nothing to do with the enterprise. The road less traveled, the road not often taken in law school, is the road on which the analysis and exploration of moral propositions become an intellectually important part of professional education."

** Solicitor General of the United States.

It has been my privilege to be associated with two laws schools that are at least making an honest effort to take this "road less traveled," by integrating religious belief into their total program. One is the school whose building we dedicate today. The other is the school of whose faculty I am a member.

St. Mary's is an accredited American law school. That means it is part of the best general system of legal education in the world. I believe that American law schools do a better job of training lawyers than the collective group of law schools in any other country. I also think we do a better job today than at any time in our own history. But many improvements remain to be made. And schools such as St. Mary's and Brigham Young have only begun to tap the potential contribution that religious values can make in training lawyers. The statement by Martin Luther (who studied law at one time) that lawyers are bad Christians may or may not be a correct description of our profession today. But there is certainly much room for improvement. As Dean Shaffer has said, "Christianity has had too little to do with what is hopeful in the American legal profession. . . . Too many candles are under too many bushels."

Today I would like to talk to you about one important respect in which religion should play a more important role in the training of lawyers. I am speaking about professional ethics—the standards of conduct by which professional lawyers deal with each other, their clients, the courts, and the public at large.

Let me begin with two propositions which are largely intuitive and, I think, indisputable. The first is that nothing is more important to the success and happiness of the individual lawyer and to the profession than high standards of professional conduct. And the second is that as lawyers we should be able to learn something from religion insofar as this important aspect of our training is concerned. The problem, after all, concerns proper human behavior, a problem to which religious belief and religious teachings are no strangers.

The issue can be stated with a tantalizing simplicity. The Sermon On The Mount and the Golden Rule are foundational tenets of the institution which sponsors the St. Mary's Law School. And St. Mary's Law School trains lawyers. If we could just instill in the graduates of this school a real appreciation of the importance of those tenets, it would necessarily solve all problems of professional responsibility and professional ethics.

Is that a job that is capable of accomplishment, either in whole or

in part, by this or any other law school? Many thoughtful and careful legal educators have expressed serious doubt that law schools have much to contribute. They point to the fact that the law teacher is typically theoretical, skeptical, and sometimes cynical, characteristics not very hospitable to the teaching of ethics and morality. In addition, they observe that the probability of a lawyer becoming an ethical professional is largely determined by values and attitudes that he or she has acquired long before coming to law school.

We can recognize the force of these views without having to give up a realistic hope that there is something that the law school, and particularly the religiously-based law school, can do. The fact that the objectives may not be totally achievable does not mean they should be completely put aside. At the very least, any law faculty should find it worthwhile and profitable to add its own institutional weight to the proposition that the integrity and morality of the members of our profession are just as important as our technical knowledge and analytical ability. We can learn from the principal draftsman of the Constitution, James Madison, who, after doing so much to fashion the technical arrangements of the national government, insisted on the importance of virtue in the people if our society is to endure as a free one.

As for the proposition that attitudes attained prior to law school are the foundation stones upon which ethical lawyers are built, that probably is correct. But a school such as St. Mary's can reinforce those foundations, which likely include substantial religious components. A St. Mary's can do this through an assurance to students by faculty members (whose skepticism in some areas is well-known) that those values should be nurtured rather than discouraged. And a St. Mary's can go beyond this—it can actually nurture those values. It can encourage the morally educated person to find, as Aristotle put it long ago, that virtue is agreeable and vice unpleasant.

Religious values are not something that law schools should ignore, or attempt to explain away, or pretend to be nonexistent. Far from being an embarrassment or an obstacle, they should be treated for what they are, indispensible components of the well-trained lawyer.

Against that general background, let me consider with you three different levels of a lawyer's ethical training and performance, progressing from the least to the most sophisticated and important. The first level requires a basic understanding of the content of our profession's printed Code of Professional Responsibility. It is a rather com-

prehensive catalog of professional dos and don'ts. Instruction in the content of that formal written list is the bare minimum now required of any law school accredited by the American Bar Association. And it is, in fact, important for a lawyer to know something about the content of those rules. It is important, for example, to know that a lawyer does not commingle his funds with those of his client, that there are limits to what he can do in attempting to obtain clients, and that there are some restrictions on what is proper conduct for a prosecutor.

In short, it is good to have a formal catalog such as the Code of Professional Responsibility. It is good for lawyers and law students to study it and for law faculty members to teach it. From very early in our civilization people have benefitted from written lists of rules. God gave a list of ten such rules to the children of Israel over 3000 years ago.

But there is also a risk to the existence of such a list. There is a natural tendency, even a temptation, to regard any kind of a cataloging list such as the Canons of Ethics—or for that matter, the Ten Commandments—as complete, and closed-ended, and to infer from its very existence that the list is comprehensive and exclusive, that compliance with the literal language of everything on that list assures that a person is, in fact, "ethical."

A second level of legal ethics training and performance involves looking at the written standards, not just in their stated terms, but also in an effort to see the policy behind them. The lawyer who performs at this second level is one who follows not only the letter of the law, but also its spirit. Let me give you two examples. Rule 11 of the Federal Rules of Civil Procedure contains about 250 words and bears the heading "Signing of Pleadings, Motions, and Other Papers." I am convinced that many lawyers who know how to read and are aware of Rule 11 have lost sight of the important principle tucked into those 250 words: that a lawyer is more than just an adversary representing a client. He or she is also an officer of the court. Rule 11 says that the signature of an attorney on any paper filed in court constitutes a certificate that to the best of that lawyer's knowledge the content of that paper is well grounded in fact and warranted by law. That affirmation represents one of the most important defenses that our judicial system has against its own deterioration and loss of integrity. It is, moreover, a defense over which the individual advocate—officer of the court—has exclusive stewardship. May the graduates of this law school al-

ways remember and take seriously not only the words of Rule 11, but also its broader principle.

My second example is based on Disciplinary Rule 7-107 of the Code of Professional Conduct, which deals with permissible out-of-court statements that may be made by lawyers concerning pending cases. It states the kinds of things that lawyers may say and the kinds of the things that they may not say.

Since the beginning days of my career as Solicitor General, I have received invitations in connection with almost every case that I argued to appear on some television or radio program to discuss that particular controversy, either right before or right after the argument. I have consistently declined because I am convinced that whatever benefits such appearances might provide to my future career as a TV star, or to my client's case, are far outweighed by the costs to my profession and to the orderly disposition of judicial disputes. While I have not ruled out the possibility that I might some day be involved in such an extraordinary case that prejudgment comment (other than just restating what was said in the briefs or oral argument) might be justified, I have yet to find such a case.

My reasoning is as follows: legal disputes are resolved in the courts, through the presentation of evidence and legal argument. The orderly presentation of both the factual and the legal issues is controlled by procedural rules that represent centuries of Anglo-American experience. Probably the principal control is the adversary system itself. The surest guarantee that one lawyer will not misstate or overstate is the presence of an opposing lawyer. That process and those safeguards are perverted and jeopardized by out-of-court comments regarding pending litigation. One concern is that such statements may reach the eyes or ears of the judges or jury members who are deciding the case.

But there is also another concern. I am reminded of it every time I leave the United States Supreme Court building and see, as I frequently do, my opponent, who has just finished presenting oral argument against me, explaining to the television cameras what the case is really all about. Since there are no controls over what he says—and since his opponent takes seriously the importance of deciding cases in the courtroom rather than through the media—the millions of people who watch that television program will get a very distorted view of the merits of the controversy. Then, if and when the United States Supreme Court decides the case the other way, there well may be a

needless diminution in the public's respect for the United States Supreme Court, as well as for courts and the judicial process in general.

The case for which I plead has ramifications beyond Rule 11, beyond DR 7-107, and even beyond the signing of pleadings or out-of-court comments on pending cases. It is a plea for recognition that the ethics of our profession reach beyond the printed pages of the rules and the canons, and that ethical problems cannot always be solved by consulting a written document. The ethical lawyer is one who will also ask why the rule exists and what kinds of lawyering activities are consistent with its underlying policy.

There is a third category of ethical concerns. It represents the highest level of lawyerly professionalism. Performance at this level depends more on matters of conscience and instinct than on memorized rules. And most of the relevant training was received long before the law school years began.

I referred a moment ago to the Ten Commandments. Those Ten Commandments, together with other similarly specific instructions, provided standards of conduct which, if observed, would lead not only to rewards in the next life, but here as well. The contents of that list are just as relevant and just as important in 1984 as they were thirty centuries ago. About 1200 years after Moses came down from Mount Sinai with the Ten Commandments, Jesus of Nazareth taught that two Commandments, much simpler and much broader, embraced all of the law and the prophets.

Today, no less than in the Meridian of Time, love of God and love of all of His children are not only the foundation of Christian belief. All other Christian concepts are included in those two. Those two Great Commandments fulfilled and expanded the more specific list of Old Testament Commandments without repealing any of them. Similarly, if we as Christians could incorporate as a constant component of our total lives, including our professional lives, a consciousness of the requirement to love and a willingness to do so, there would be no need for any code of professional ethics. This is because all of the thousands of words of that Code, as worthwhile as they are, would be not only subsumed, but also enlarged by the simpler yet broader mandate expressed in thirteen short words, "Thou shalt love the Lord thy God . . . and . . . love thy neighbor as thyself."

Let me give you two examples of lawyers who, in my opinion, exhibited this highest level of professionalism, a level which reaches be-

yond the words and the policies of our written ethical code and catches the spirit of treating other people, including brother lawyer, as we would like to be treated.

A central player in the first example is one of my oldest and best friends, Judge Monroe McKay, now a member of the United States Court of Appeals for the Tenth Circuit. Soon after he started practice in Phoenix, he encountered a difficult problem concerning which there seemed to be no precedent. One of his colleagues informed him that Mark Wilmer, one of the senior and most respected members of the Phoenix Bar had had a similar problem. With some hesitation lest he appear presumptuous, my friend called Mr. Wilmer, who offered to have lunch with this young lawyer whom he had never met. As they broke bread together, one of the most seasoned veterans of the Arizona Bar told one of its greenest rookies, "Monroe, so far as I know there is nothing in the books that will tell you how to handle that problem. But here's the way that I dealt with it when I faced it. . . ."

The second experience is mine, and it also occurred in Phoenix, where I practiced. One Friday afternoon I received a telephone call from our firm's largest client, asking for advice in connection with a wildcat strike. After going through a brief siege of panic when I found that both of the labor lawyers in our firm were out of town and could not be reached, I called John Boland, a labor law expert in a competing firm. I told him of my dilemma. To my great relief, he responded that he would be happy to do what he could. He suggested that since time was of the essence, it would probably be better if he talked directly to our client, rather than dealing through me, as he would prefer to do but for the time problems. That conversation occurred about 2:00 p.m. At 5:00 p.m., Mr. Boland reported on what he had done. He expressed his confidence that the matter would not need further legal guidance until Monday, but he gave me his home telephone number in case I needed to call him over the weekend.

It was obvious that he had spent the entire afternoon dealing with my client's problem. I thanked him as best I could and then asked if he would prefer to send his bill to our firm or direct to the client. His response was one of which every word will remain with me throughout my life: "No, you should bill these services for whatever you think they are worth. Your firm has always been very decent with us, and I was happy to help out a brother lawyer when he needed help."

There are those among us who say that that kind of concern, one

lawyer for another—a Mark Wilmer or a Jack Boland giving personal attention to the problems of a Monroe McKay or a Rex Lee—is a thing of the past and is totally unrealistic. I hope they're wrong. Those performances represent professionalism at its highest. They do not result from knowing the contents of the Canons of Ethics, or even the policies behind those Canons. They result from a genuine concern for the problems of other people.

It is particularly challenging for lawyers to develop that kind of attitude toward other lawyers because of the built-in competitive features of our profession. We are constantly in competition with each other, not just for available lawyering business, but also because we make our living as adversaries, and our opponent is another lawyer. We need to look beyond that adversary relationship and temper it with a recognition that that competitor of ours is also our brother or sister, and that as Christians we must include other members of the profession within our circle of neighbors.

Of course those decisions will not be easy. There are times when relationships with other lawyers come into direct conflict with the interests of our clients, but not always, as my stories about Mark Wilmer and Jack Boland illustrate.

Those of you who will learn your law in this building will profit from several advantages. The first is the building itself. Even more important than the building is the faculty. Also more important than the building, and potentially even as important as the faculty, is the fact that you bring a set of values to an institution that recognizes those values not as an impediment, not as something to be stripped away by a student of the law, but rather as a necessary constituent element of serious legal study. It is, in short, an institution which recognizes that the two greatest Commandments—love of God and love of one's neighbor—can and should fit very comfortably into the training of members of our profession.