

# Ethics

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# Honor and Dignity

“The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all, and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done.”

Berger v. United States (1935) 295 U.S. 78, 88

# Honor and Dignity

- “As such, he is in a peculiar and very definite sense the servant of the law, the two-fold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor -- indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.”

Berger, at 88

# Honor and Dignity

- “It is fair to say that the average jury, in a greater or less degree, has confidence that these obligations, which so plainly rest upon the prosecuting attorney, will be faithfully observed. Consequently, improper suggestions, insinuations, and, especially, assertions of personal knowledge are apt to carry much weight against the accused, when they should properly carry none.”

Berger, at 88

# Honor and Dignity

- “It is as much the duty of the United States Attorney to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.”

Berger at 88

# Honor and Dignity

- “Sensitiveness to fair play and sportsmanship is perhaps the best protection against the abuse of power, and the citizen’s safety lies in the prosecutor who tempers zeal with human kindness, who seeks truth and not victims, who serves the law and not factual purposes, and who approaches his task with humility”

Attorney General and Supreme Court Justice Robert H. Jackson

# Honor and Dignity

- The law has no compassion. And justice is administered without compassion.

Christopher Darden

# Honor and Dignity

- A prosecutor represents the People of the State of California, not the police and not the victim(s) involved in a particular case, except insofar as they are included among the People.

See California Penal Code §684, Shepard  
v. Superior Court (1976) 17 Cal.3d 107

# Duties of Attorneys

- Business and Professions §6068
- It is the duty of an attorney to do all of the following:
  - (a) To support the Constitution and laws of the United States and of this state.
  - (b) To maintain the respect due to the courts of justice and judicial officers.
  - (c) To counsel or maintain those actions, proceedings, or defenses only as appear to him or her legal or just, except the defense of a person charged with a public offense.
  - (d) To employ, for the purpose of maintaining the causes confided to him or her those means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law.

# Duties of Attorneys

- (e) (1) To maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client.
- (f) To advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he or she is charged.
- (g) Not to encourage either the commencement or the continuance of an action or proceeding from any corrupt motive of passion or interest.

# Duties of Attorneys

- (m) To respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services.

# Duties of Attorneys

- (o) To report to the agency charged with attorney discipline, in writing, within 30 days of the time the attorney has knowledge of any of the following:
- (3) The imposition of judicial sanctions against the attorney, except for sanctions for failure to make discovery or monetary sanctions of less than one thousand dollars (\$1,000).
- (7) Reversal of judgment in a proceeding based in whole or in part upon misconduct, grossly incompetent representation, or willful misrepresentation by an attorney.

# Rules of Professional Conduct

## ■ Rule 5-110

### **Performing the Duty of Member in Government Service**

A member in government service shall not institute or cause to be instituted criminal charges when the member knows or should know that the charges are not supported by probable cause. If, after the institution of criminal charges, the member in government service having responsibility for prosecuting the charges becomes aware that those charges are not supported by probable cause, the member shall promptly so advise the court in which the criminal matter is pending.

# Rules of Professional Conduct

## ■ Rule 5-220

### Suppression of Evidence

A member shall not suppress any evidence that the member or the member's client has a legal obligation to reveal or to produce.

# Brady v. Maryland

- “We now hold that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.”

(1966) 377 U.S 83, 88

# Brady v. Maryland

- “A prosecution that withholds evidence on demand of an accused which, if made available, would tend to exculpate him or reduce the penalty helps shape a trial that bears heavily on the defendant. That casts the prosecutor in the role of an architect of a proceeding that does not comport with standards of justice, even though, as in the present case, his action is not “the result of guile,”

373 U. S. at 88

# Rules of Professional Conduct

## ■ Rule 2-100

### **Communication With a Represented Party (A)**

While representing a client, a member shall not communicate directly or indirectly about the subject of the representation with a party the member knows to be represented by another lawyer in the matter, unless the the member has the consent of the other lawyer.

# Crime Charging

- Must be satisfied that the evidence shows that the accused is guilty of the crime to be charged;
- There is legally sufficient, admissible, evidence of a corpus delicti
- There is legally sufficient, admissible, evidence of the accused's identity

# Crime Charging

- Having considered the probability of conviction by an objective fact-finder hearing the admissible evidence, and after hearing the most plausible, reasonably foreseeable defense, the evidence is of such a convincing force that it would warrant a conviction of the crime charged

# Crime Charging

- Should not use the charging process to obtain leverage to induce a guilty plea to a lesser charge prior to trial

# Duty to Act with Integrity

- A prosecutor's discretionary powers carry with them a mandate to act with virtue
- A prosecutor should avoid not only improprieties but the appearance of an impropriety
- A prosecutor should seek to fairly enforce the law as enacted by the legislature and interpreted by the courts

# Wear the White Hat



