

Lawyers Crossing Lines

Ten Stories

Second Edition

Michael L. Seigel

James L. Kelley

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*To the lawyers in my life, including Professor Phillip Heymann,
the Honorable Edward R. Becker, and Philadelphia Organized Crime
Strike Force Chief Joel Friedman, who taught me early on that certain
lines are never to be crossed.*

—M.L.S.

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Preface to the Second Edition

As the oft-repeated adage tells us, we typically learn more from our mistakes than our successes. In some realms, however, personal mistakes can be extremely costly, so it is best if we learn from the unfortunate miscues of others. That is the premise of this book.

Lawyers Crossing Lines is a collection of true stories about lawyers from all segments of the legal profession who transgressed ethical boundaries. Most of them ended up being sanctioned by their state Bar, sued for malpractice, prosecuted, or some combination of all three. In one case, however, a lawyer made the very difficult and potentially laudatory decision to follow his conscience and risk disciplinary action, which was instituted but ultimately came out in his favor. All of the cases are rich in detail, many are bizarre, and a few feature conduct so outrageous as to stretch the reader's credulity. Each tale is followed by comments and questions designed to explore the issues in greater depth.

This modest volume is intended as a supplemental text for students in Professional Responsibility courses at American law schools. It can also be used as the foundation for an advanced seminar in ethics. It is based on the proposition that, although the rules of professional responsibility are, of course, of supreme importance, sometimes the study of them can be monotonous and dry. More important, students—none of whom have been in law practice and most of whom have never been out in the working world—often find it hard to believe that the rules can be so easily and egregiously broken. Real world scenarios bring the ethical quandaries faced in everyday legal practice to life.

The chapters in the book include an in-depth look at the behavior of (1) Mike Nifong, the prosecutor in the infamous Duke rape case; (2) a family law attorney who had sexual relationships with six of his clients; (3) a criminal defense attorney and his prosecutor-friend who got in trouble over an autographed baseball; (4) an out-of-control judge whose outrageous conduct resulted in her removal from the bench; (5) class action lawyers at the prestigious firm of Milberg Weiss who for years illegally paid individuals to be lead plaintiffs; (6) a criminal defense attorney whose deliberate ineffective assis-

tance aided his client in receiving the death penalty; and (7) a major but now defunct law firm that violated its duty of loyalty to a client by breaching a Chinese wall. There is also a chapter examining the conduct of lawyers who “went undercover” against a judge’s law clerk to get information that would lead to the recusal of the judge, and one confronting the issue of whether it is ever proper to breach one’s duty of confidentiality to overturn a wrongful conviction.

The information in the chapters comes from a variety of sources. Whenever possible, original records, including those from courts and disciplinary tribunals, were employed. In some cases, participants in the events were interviewed to gain additional detail and a present-day perspective on what transpired. Many chapters also rely on a whole variety of secondary sources, such as books, magazines, newspapers, and Internet sites. The book employs the ABA Model Rules on Professional Conduct (2008) as its primary source of law, although from time to time it also makes reference to the ethical rules of specific jurisdictions as well as some state and federal criminal and civil statutes and regulations. The authors assume that students will have a copy of the ABA Model Rules available to them as they engage the text.

By its very nature, *Lawyers Crossing Lines* creates a pretty dismal picture of the ethical standards of the legal profession. Not only does it pick out the bleakest cases for discussion, but it often reveals that lawyers situated on the periphery of these cases who became aware of gross ethical violations by other lawyers simply looked the other way. Nevertheless, we do not intend to suggest that the book is a portrait of how the profession as a whole behaves. There is, of course, no objective way to measure levels of ethical conduct among lawyers; informed judgments about the seriousness and scope of misconduct come from practitioners, disciplinary authorities, malpractice insurers, and students of the problem. Nevertheless, we believe firmly that the great majority of lawyers play by the rules—most of them scrupulously, others in their fashion. Very few lawyers give in to temptation and fewer still plainly flout their ethical responsibilities. These, then, are cautionary tales.

We are hopeful that this work will help create an atmosphere in the classroom in which lively discussion and debate take place. The more robust the discussion of ethics occurring in our law schools, the more likely we are to turn out future generations of lawyers who understand, respect, and obey ethical lines. That is our goal.

Michael L. Seigel
Tampa, Florida
August 2009

Acknowledgments

The creation of this book was a truly collaborative effort that crossed generational lines. First and foremost, recognition must be given to the late Judge James L. Kelley, who conceived of this project and carried it through to fruition in the first edition. Though I never met Judge Kelley, I have come to appreciate the wisdom he developed through his years on the bench, and I have done my best to remain faithful to his vision. Two of his original chapters remain a part of this edition, and they are remarkable for their research depth, lucid writing, and cogent analysis.

I am, of course, indebted to Publisher Keith Sipe and Senior Editor Linda Lacy of Carolina Academic Press for inviting me to write this second edition of *Lawyers Crossing Lines*. I honestly don't know why they thought I was right for the job because, at the time they asked, they had not yet seen the manuscript for the first book that I wrote for them, though I flatter myself to think that they were aware of my mystery novel and figured that my experience as a fiction writer would serve me well in this endeavor. In any event, I am grateful for the opportunity, and I hope I have lived up to their very high professional expectations.

The process by which this second edition was created was one of the most enjoyable experiences of my teaching career. Early on, I realized that, to meet a tight production schedule, I would need an extraordinary amount of assistance. After some brainstorming, I scheduled a seminar at the University of Florida Frederic G. Levin College of Law based on the first edition of the book. After collectively reading and analyzing that work, each student selected a new ethical scandal about which to research and write. The eight best seminar papers became the foundation for eight new chapters in this edition.

Therefore, I am grateful for the enthusiasm, diligence, and research and writing abilities of the following students, listed in the order of the chapters for which they provided help: Andres Healy, Susan Malove, Elizabeth Manno, Emily Banks Jahr, Stephanie L. Varela, Mindy Yergin, Loren J. Beer, and Ann Hove. I could not have accomplished this project in the time allotted without their superb contribution to the effort. They made me proud of the University of Florida, and I'm confident that they will each continue to

make me proud as successful practicing attorneys who understand where the ethical lines are drawn.

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Michael L. Seigel
Tampa, Florida
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