

NOTE TO LAWYERS & ETHICS SECTION 2 EXAM PROCTORS:
STUDENTS MAY BRING IN THIS PAPER TO THE FINAL EXAM

2014 Lawyers & Ethics Section 2 Common Law

- A judge shall participate in establishing, maintaining, and enforcing high standards of conduct, and shall personally observe these standards so that the integrity and independence of the judiciary will be preserved.
- A judge must be unbiased.
- Judges are to be at a higher standard than all others in the legal profession.
- A lawyer must not engage in conduct that is prejudicial to the administration of the justice system.
- A lawyer must not engage in conduct involving dishonesty, fraud, deceit, misrepresentation, or violation of the criminal law.
- A lawyer is responsible to a client, which means that a lawyer must subordinate the interests of others to those of the client, but that responsibility does not imply that a lawyer may disregard the rights of third persons.
- A lawyer shall not use means that have no purpose other than to embarrass, delay, or burden a third person.
- A lawyer should demonstrate respect for the legal system.
- A lawyer shall not abuse power gained through legal education to threaten or intimidate others.
- A lawyer must possess moral and ethical fortitude not required by many other professions such that the members of the community give the professional the power to make decisions for them.

I WAS NOT THERE, yet I was there. No, I did not go to the trial, I did not hear the verdict, because I knew all the time what it would be. Still, I was there. I was there as much as anyone else was there. Either I sat behind my aunt and his godmother or I sat beside them. Both are large women, but his godmother is larger. She is of average height, five four, five five, but weighs nearly two hundred pounds. Once she and my aunt had found their places—two rows behind the table where he sat with his court-appointed attorney—his godmother became as immobile as a great stone or as one of our oak or cypress stumps. She never got up once to get water or go to the bathroom down in the basement. She just sat there staring at the boy's clean-cropped head where he sat at the front table with his lawyer.

Even after he had gone to await the jurors' verdict, her eyes remained in that one direction. She heard nothing said in the courtroom. Not by the prosecutor, not by the defense attorney, not by my aunt. (Oh, yes, she did hear one word—one word, for sure: "hog.") It was my aunt whose eyes followed the prosecutor as he moved from one side of the courtroom to the other, pounding his fist into the palm of his hand, pounding the table where his papers lay, pounding the rail that separated the jurors from the rest of the courtroom. It was my aunt who followed his every move, not his godmother. She was not even listening. She had gotten tired of listening. She knew, as we all knew, what the outcome would be. A white man had been killed during a robbery, and though two of the robbers had been killed on the spot, one had been captured, and he, too, would have to die. Though he told them no, he had nothing to do with it, that he was on his way to the White Rabbit Bar and Lounge when Brother and Bear drove up beside him and offered him a ride. After he got into the car, they asked him if he had any money. When he told them he didn't have a solitary dime, it was then that Brother and Bear started talking credit, saying that old Gropé should not mind crediting them a pint since he knew them well, and he knew that the grinding season was coming soon, and they would be able to pay him back then.

The store was empty, except for the old storekeeper, Alcee Gropé, who sat on a stool behind the counter. He spoke first. He asked Jefferson about his godmother. Jefferson told him his nannan was all right. Old Gropé nodded his head. "You tell her for me I say hello," he told Jefferson. He looked at Brother and Bear. But he didn't like them. He didn't trust them. Jefferson could see that in his face. "Do for you boys?" he asked. "A bottle of that Apple White, there, Mr. Gropé," Bear said. Old Gropé got the bottle off the shelf, but he did not set it on the counter. He could see that the boys had already been drinking, and he became suspicious. "You boys got money?" he asked.

Brother and Bear spread out all the money they had in their pockets on top of the counter. Old Gropé counted it with his eyes. "That's not enough," he said. "Come on, now, Mr. Gropé," they pleaded with him. "You know you go'n get your money soon as grinding start." "No," he said. "Money is slack everywhere. You bring the money, you get your wine." He turned to put the bottle back on the shelf. One of the boys, the one called Bear, started around the counter. "You, stop there," Gropé told him. "Go back." Bear had been drinking, and his eyes were glossy, he walked unsteadily, grinning all the time as he continued around the counter. "Go back," Gropé told him. "I mean, the last time now—go back." Bear continued. Gropé moved quickly toward the cash register, where he withdrew a revolver and started shooting. Soon there was shooting from another direction. When it was quiet again, Bear, Gropé, and Brother were all down on the floor, and only Jefferson was standing.

He wanted to run, but he couldn't run. He couldn't even think. He didn't know where he was. He didn't know how he had gotten there. He couldn't remember ever getting into the car. He couldn't remember a thing he had done all day.

He heard a voice calling. He thought the voice was coming from the liquor shelves. Then he realized that old Gropé was not dead, and that it was he who was calling. He made himself go to the end of the counter. He had to look across Bear to see the storekeeper. Both lay between the counter and the shelves of alcohol. Several bottles had been broken, and alcohol and blood covered their bodies as well as the floor. He stood there gaping at the old man slumped against the bottom shelf of gallons and half gallons of wine. He didn't know whether he should go to him or whether he should run out of there. The old man continued to call: "Boy? Boy? Boy?" Jefferson became frightened. The old man was still alive. He had seen him. He would tell on him. Now he started babbling. "It wasn't me. It wasn't

me, Mr. Gropé. It was Brother and Bear. Brother shot you. It wasn't me. They made me come with them. You got to tell the law that, Mr. Gropé. You hear me, Mr. Gropé?"

But he was talking to a dead man.

Still he did not run. He didn't know what to do. He didn't believe that this had happened. Again he couldn't remember how he had gotten there. He didn't know whether he had come there with Brother and Bear, or whether he had walked in and seen all this after it happened.

He looked from one dead body to the other. He didn't know whether he should call someone on the telephone or run. He had never dialed a telephone in his life, but he had seen other people use them. He didn't know what to do. He was standing by the liquor shelf, and suddenly he realized he needed a drink and needed it badly. He snatched a bottle off the shelf, wrung off the cap, and turned up the bottle, all in one continuous motion. The whiskey burned him like fire—his chest, his belly, even his nostrils. His eyes watered; he shook his head to clear his mind. Now he began to realize where he was. Now he began to realize fully what had happened. Now he knew he had to get out of there. He turned. He saw the money in the cash register, under the little wire clamps. He knew taking money was wrong. His nannan had told him never to steal. He didn't want to steal. But he didn't have a solitary dime in his pocket. And nobody was around, so who could say he stole it? Surely not one of the dead men.

He was halfway across the room, the money stuffed inside his jacket pocket, the half bottle of whiskey clutched in his hand, when two white men walked into the store.

That was his story.

The prosecutor's story was different. The prosecutor argued that Jefferson and the other two had gone there with the full intention of robbing the old man and then killing him so that he could not identify them. When the old man and the other two robbers were all dead, this one—it proved the kind of animal he

really was—stuffed the money into his pockets and celebrated the event by drinking over their still-bleeding bodies.

The defense argued that Jefferson was innocent of all charges except being at the wrong place at the wrong time. There was absolutely no proof that there had been a conspiracy between himself and the other two. The fact that Mr. Gropé shot only Brother and Bear was proof of Jefferson's innocence. Why did Mr. Gropé shoot one boy twice and never shoot at Jefferson once? Because Jefferson was merely an innocent bystander. He took the whiskey to calm his nerves, not to celebrate. He took the money out of hunger and plain stupidity.

"Gentlemen of the jury, look at this—this—this boy. I almost said man, but I can't say man. Oh, sure, he has reached the age of twenty-one, when we, civilized men, consider the male species has reached manhood, but would you call this—this—a man? No, not I. I would call it a boy and a fool. A fool is not aware of right and wrong. A fool does what others tell him to do. A fool got into that automobile. A man with a modicum of intelligence would have seen that those racketeers meant no good. But not a fool. A fool got into that automobile. A fool rode to the grocery store. A fool stood by and watched this happen, not having the sense to run.

"Gentlemen of the jury, look at him—look at him—look at this. Do you see a man sitting here? Do you see a man sitting here? I ask you, I implore, look carefully—do you see a man sitting here? Look at the shape of this skull, this face as flat as the palm of my hand—look deeply into those eyes. Do you see a modicum of intelligence? Do you see anyone here who could plan a murder, a robbery, can plan—can plan—can plan anything? A cornered animal to strike quickly out of fear, a trait inherited from his ancestors in the deepest jungle of blackest Africa—yes, yes, that he can do—but to plan? To plan, gentlemen of the jury? No, gentlemen, this skull here holds no plans. What you see here is a thing that acts on command. A thing to hold the handle of a plow, a thing to load your bales of cotton,

a thing to dig your ditches, to chop your wood, to pull your corn. That is what you see here, but you do not see anything capable of planning a robbery or a murder. He does not even know the size of his clothes or his shoes. Ask him to name the months of the year. Ask him does Christmas come before or after the Fourth of July? Mention the names of Keats, Byron, Scott, and see whether the eyes will show one moment of recognition. Ask him to describe a rose, to quote one passage from the Constitution or the Bill of Rights. Gentlemen of the jury, this man planned a robbery? Oh, pardon me, I surely did not mean to insult your intelligence by saying 'man'—would you please forgive me for committing such an error?

"Gentlemen of the jury, who would be hurt if you took this life? Look back to that second row. Please look. I want all twelve of you honorable men to turn your heads and look back to that second row. What you see there has been everything to him—mama, grandmother, godmother—everything. Look at her, gentlemen of the jury, look at her well. Take this away from her, and she has no reason to go on living. We may see him as not much, but he's her reason for existence. Think on that, gentlemen, think on it.

"Gentlemen of the jury, be merciful. For God's sake, be merciful. He is innocent of all charges brought against him.

"But let us say he was not. Let us for a moment say he was not. What justice would there be to take this life? Justice, gentlemen? Why, I would just as soon put a hog in the electric chair as this.

"I thank you, gentlemen, from the bottom of my heart, for your kind patience. I have no more to say, except this: We must live with our own conscience. Each and every one of us must live with his own conscience."

The jury retired, and it returned a verdict after lunch: guilty of robbery and murder in the first degree. The judge commended the twelve white men for reaching a quick and just verdict. This was Friday. He would pass sentence on Monday.

Ten o'clock on Monday, Miss Emma and my aunt sat in the same seats they had occupied on Friday. Reverend Mose Ambrose, the pastor of their church, was with them. He and my aunt sat on either side of Miss Emma. The judge, a short, red-faced man with snow-white hair and thick black eyebrows, asked Jefferson if he had anything to say before the sentencing. My aunt said that Jefferson was looking down at the floor and shook his head. The judge told Jefferson that he had been found guilty of the charges brought against him, and that the judge saw no reason that he should not pay for the part he played in this horrible crime.

Death by electrocution. The governor would set the date.