



# Kindness and Other Inalienable Rights

By E. Stephanie Hebert

**W**atching my father cross-examine the prosecutor's chief witness from the front row of the 253rd District Court was like watching him engrossed in a normal conversation. My dad is a social guy, so he looked and sounded like he could have been talking with his sister, his favorite bank teller, or one of his teenage grandchildren. Dad has always had a great deal of respect for other people, but I had no idea just how compassionate he was until I watched him that day during a spousal assault trial.



2011 Short Story Fiction Writing Contest

One's station in life has never mattered much to my father. Nor does the amount (or lack) of cash one might have. He often goes out of his way to assist someone on the side of the road, even if it means being late to court or a special event. I suspect that it is his compassion for people that has made Dad a great criminal defense lawyer. As a kid, I had no idea why my dad chose a profession that assisted people who intentionally hurt other people. I sometimes felt embarrassed that my father had chosen this area of law, but Dad maintained that he was proud of his profession and his practice. He taught us kids that all people had inalienable rights, regardless of whether they made the wrong choices, regardless of the color of their skin, and regardless of whether they were rich or poor.

Notwithstanding the ethical dilemma his children faced, each of us begged to go to the courthouse with Dad. On school holidays, we fought over which of us would be chosen to accompany him on his daily rounds. He frequently traveled to three counties on any given day, so making the rounds with Dad guaranteed us uninterrupted time with our father. Each of us would have him all to ourselves for that one day. Invariably, we would talk about general criminal law principles and the specifics of his cases for the day, but we didn't care. Dad would talk the entire time he drove, speeding west via Interstate 10 to Houston, then east to Anahuac by mid-morning, and then north to Liberty County for an afternoon docket call. It felt like we were on a rollercoaster at Astroworld, and we had a blast. We were his traveling jury and a captive audience while we were in the car, and it afforded Dad the opportunity to practice his oral arguments before presenting motions in open court. Once we arrived at our destination, Dad would introduce us to all of the clerks, coordinators, and judges at the courthouse like we were movie stars and famous novelists. And on the days we were with him, we truly felt we were.

Later, when I was in high school, I worked for Dad after school. All of us kids did at one time or another. He insisted that all five of his daughters take typing classes as early as possible because "Young women have to have something to fall back on," and because Dad was always in need of extra hands at the office. Dad was working on the Bocanegra murder trial at the time, representing the gang member who was alleged to have committed the crime. He let me sit with him while he interviewed witnesses, and I thought it was interesting until I viewed photographs of the victim's body. This was before crime scene investigation shows hit our television screens every night of the week, so I was not yet accustomed to seeing photos of a dead woman with her face blown off.

As we interviewed one witness after the other, I started thinking, "What if the guy is guilty?" And, "Is it ethical to represent someone you think is guilty?" But the harder question (and most important to Dad) was this: "What if he's innocent and is wrongly convicted?" I think it was the latter question that kept Dad practicing criminal law. Dad figured that anyone committing such a heinous crime would get his or her judgment one

day, but to stand by and watch an innocent man go to jail was inconceivable. Dad's passion seemed to be motivated by the mere possibility (not to mention, presumption) of innocence, and the right of every human being to a fair trial. He would concede, on occasion, that some people are guilty, and in those cases, "You do the best you can to protect their constitutional rights." Furthermore, he would argue, "It's not just your client's rights that you have to think about. You have to consider the constitutional rights of the public at large because they too are affected by the outcome."

It wasn't until I read *Miranda* during my first year in law school that I was truly able to understand my father's passion and realize that one criminal appellate case did, in fact, affect other peoples' lives. I also realized that the violation of a person's constitutional rights could be worse than the crime committed, and just as important. Still, I couldn't see myself practicing criminal law. Interestingly, as I began abandoning the idea of taking over my father's criminal practice, I became more interested in who my father was as a human being. He obviously had a successful practice and I needed all the direction I could get after graduation.

Dad didn't spend money on expensive suits and Mom ironed his shirts most of the time. Once when I accompanied him to court, he wore a tennis shoe on one foot because of a corn on his toe, but the tennis shoe didn't seem to embarrass him. He often cooked gumbo for the court clerks, invited his law clerks to our house for dinner, and did more than his share of pro bono work. If a client was in the hospital, he went to the hospital, if needed. He frequently made house calls. He would drive a hundred miles to visit with an elderly woman whose husband had just died and would then probate the will for \$100.

Obviously, the criminal cases were a more lucrative source of income. I watched Dad negotiate plea deals with district attorneys as if his life depended on it, and, even though they were in the business of convicting his clients, Dad treated the DAs with the utmost respect. The plea negotiations were always sobering events for us kids because we knew that someone's liberty was at risk. So when Dad took us with him to county jails and state prisons, we were buckled over with fear. Nothing frightened me more than sitting in front of a three-inch plate glass window with a Charles Manson look-alike staring back at me. On those occasions when a face-to-face meeting at the jail could be arranged between Dad and his client, I would remain paralyzed in my chair, in fear that Dad's client would at any minute pull a knife out of his sock. And trips with Dad to Huntsville were just downright ominous. But nothing scared Dad. Before he ended these meetings with his clients, Dad would ask if they needed anything, and he would promise each of them that he would call their mothers (which he did). I used to think that Dad took us kids to the county jails and prisons just to scare the hell out of us and that his plan must have worked because none of us ended up in the slammer.



Dad's respect for people sometimes meant that people would take advantage of him. I'd often wonder how the people who needed him most could refuse to pay him, knowing that he was at the courthouse every day and could easily have sued them. I guess they just knew that if they needed the shirt off his back, Dad would have literally given it to them.

Judge Woods was presiding in the 253rd District Court on the day of the spousal assault trial. It was a bench trial, and the defendant, Dad's client, was charged with brutally stabbing his wife. The feeling in the courtroom was "guilty," or at least that's what I remember feeling. The complaining witness was describing how her husband repeatedly stabbed her, and the photographs admitted into evidence were horrific. Certainly, a considerable amount of time had passed since the crime had occurred, but the state's witness looked frail and timid. I don't recall the woman testifying about the emotional injuries she sustained, but her body language and her facial expressions communicated every bit of it. Although Dad was utterly respectful and kind toward the witness on cross-examination, the woman began shaking uncontrollably. Having to take the stand and testify was more than she could endure, and it appeared that she had reached her tipping point. Dad stopped his examination and asked her, "Ma'am, are you okay? Do you

need to take a break?" Hearing these few words of compassion, the woman began to cry and couldn't stop. When she was able to catch her breath, she responded to my father by saying, "I'm cold." Without hesitation, my Dad requested permission to remove his suit jacket and to approach the witness. He walked around to the back of the witness chair and wrapped his coat over her shoulders. He returned to his chair in his shirt and tie, and waited for the witness to regain her composure. She stopped crying altogether and her facial expressions suggested that she had never before been treated with such kindness. You could have heard a pin drop. No one said a word for what seemed like several minutes. The prosecutor, certainly on edge, didn't know what to do. The judge was speechless. Once my dad was convinced that the witness was once again stable, he passed the witness back to the prosecutor, but there was no redirect examination. As the judge released the woman from the witness stand, my dad's jacket was still wrapped around her shoulders.

On one hand, my father's actions made perfect sense to me because I knew him well. On the other hand, my father and this witness were opponents, and my dad was in court that day seeking an acquittal. Then it occurred to me that my father's actions might be interpreted as manipulation or trial strategy (i.e., by his act of compassion, he was asking for compassion in return, in the form of forgiveness from the witness). But I know my father, and his motive, if any, was mere kindness.

I don't remember whether my father's client was found guilty or was acquitted because the remainder of the trial was a blur. They could have cut a deal during the lunch break, but I honestly don't remember. All I remember is that time just stopped — for all of us in the courtroom — frozen by the unexpected compassion shown by one human being to another.

Since that day in the 253rd, I have witnessed many prominent trial lawyers use outrageous trial tactics to sway witnesses, judges, and juries — sometimes with success. But, honestly, I've never been very impressed by that behavior. I admit that when I finally learned to employ those same tactics myself, it was fun, but only for about five minutes. It just doesn't feel right to manipulate people to get what you want. Sure, it can benefit your wallet, but it can also drain your soul.

After we're gone, people won't remember the closing arguments we made or the brilliant legal briefs we filed. They will remember us instead for the compassion we showed them when they desperately needed it. As far as I know, there is no inalienable right to kindness. But, thankfully, there are people in this world who teach us to live as if such a right nevertheless exists.



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