

2002 DISTINGUISHED ALUMNI LECTURE

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I. INTRODUCTION

I want to talk today about law as training and background for possible business careers, about leadership, and about what we are seeing in our country right now with corporate malfeasance—or what I would call corporate malfeasance—and some of the issues and the lack of qualities in leadership that I think are demonstrated by some of the problems that we are having.

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While in law school, Mr. Kline served as Editor in Chief of the *Tennessee Law Review* and was elected to the Order of the Coif. After law school, he practiced with the Chattanooga firm of Miller & Martin, where his association with Coca-Cola began in 1981. Mr. Kline served as general counsel and secretary of Johnston Coca-Cola Bottling Group Incorporated prior to its merger into Coca-Cola Enterprises (“CCE”) in 1991. During the ten years he represented and worked with Johnston Bottling Company, Mr. Kline was actively involved in the negotiation and completion of acquisitions by several Coca-Cola bottlers, including the Johnston Company of Coca-Cola Bottling Midwest, Cincinnati Coca-Cola, Blue Grass Coca-Cola, and Central State Coca-Cola. He also was instrumental in handling public and private debt transactions to finance those acquisitions.

Mr. Kline was named general counsel of CCE, the world's largest marketer, distributor, and producer of bottled and canned non-alcoholic liquid refreshment, after Johnston Bottling merged with CCE in December of 1991. Since that time, he has played an active role in the negotiation and completion of CCE's acquisitions, including its expansion into Canada and Europe. Mr. Kline has served CCE as senior vice-president and general counsel, as executive vice-president, as chief administrative officer, and, since April 2001, as chief executive officer. Additionally, since April of this year, he has served as chairman of the board.

He currently serves on the Boards of Directors of the Coca-Cola Scholars Foundation, the National Soft Drink Association and Jackson Furniture Industries, Incorporated. He also is a member of the Board of Trustees of the Woodruff Arts Center in Atlanta. He has served on the boards of several civic organizations in Chattanooga, including the Girls Preparatory School and the Siskin Hospital for Physical Rehabilitation. In addition, Mr. Kline has provided outstanding service to the College of Law as a member of our Alumni Advisory Counsel and our Dean's Circle.

II. LAW AS TRAINING FOR BUSINESS

It is interesting that anyone would want to move from law to becoming a business executive, especially since the last public opinion poll put corporate executives below telemarketers in terms of respect that they demand and certainly well, well below lawyers. But, it is clear that more and more lawyers are becoming business executives. A lot of them are becoming chief executive officers and chief operating officers, and they are moving from law. They are actually taking advantage of the training and the experience that they had as lawyers to capture these opportunities and to become very, very effective and very good business executives, and I think there are several reasons for that.

I think that lawyers are clearly trained to understand all sides of disputes and conflicts, and that is what life is all about—disputes and conflicts. People who practice law learn how to deal with that and learn how to manage that, which I think benefits them greatly when they move into business careers. They also come into contact, typically, with all elements of society. So, they see society at all stages and in all elements, and that is very helpful for them.

They see firsthand and participate in the success and failures of people, enterprises, and businesses. So, they learn, I think, a lot from that. Lawyers are in the business of finding solutions. They are in the business of giving advice and pointing out pitfalls but, more importantly, looking for ways to resolve conflicts by defining common ground for agreement.

After law school, I think that you will learn that there are very few absolutes—that there are always ways to craft positions for both sides of any dispute or argument. I remember one exception to that from law school. My first year of law school, I took a course in legal process or the basic law course under Professor Overton. He gave us an examination at the end of the year. Part of it was essay, and part of it was multiple choice. And, there was one question—those of you who had him as an instructor and teacher will remember this—that, regardless of how well you did on the essays or on all of the other multiple-choice questions, if answered incorrectly, you failed the course. The question was something like this:

Subject matter jurisdiction is a function of: (A) propriety, (B) power, or (C) personal service and process.

And, if you did not answer “(B) power,” that was an absolute in his mind that you did not need to be a lawyer. Some of you, I think, remember that, too.

Lawyers, I think, also tend to ask questions first and not simply provide answers and solutions. They learn how to inquire and to understand people and understand situations. They also learn, I think, how to lose and learn how to deal with losing. In any trial setting, dispute resolution situation, or any kind of negotiation, you will not always be completely successful. Lawyers learn how to accept that and how to deal with it.

I had a lot of failures—certainly, still have a lot of failures—especially in the beginning of my legal career because I was trying to be a trial lawyer. And, a lot of those trials were in criminal court, where I was court-appointed, and that was always a difficult challenge. At that time, early in my career, I practiced with one of your professors here, Jerry Phillips, a fine lawyer and a fine, fine professor. Jerry actually bailed me out on appeal on a lot of those cases. Jerry, I thank you for that.

However, I think that experience gave me the flexibility to change, and it gave me, I think, the tools to deal with adversity. And, in my case, I think that the path from law to business really started by moving from the private practice of law to becoming in-house counsel with Coca-Cola Enterprises. From that point, the transition happened because I was willing to take on additional responsibilities, not just simply as a lawyer, but other administrative and managerial functions, such as human resources. I also had substantial interest in governmental affairs, risk management, and other functions. I realized that after about thirty years of practicing law an element of burn-out was taking its toll. I sensed it, and it may happen to you as well over a period of time. Whether sooner or later, it is okay if it does.

If you do have an interest in going into business and working for a corporation, the role of in-house counsel or staff attorney is one that provides an excellent venue for a lot of experiences—very valuable experiences—especially in our current environment. In addition, it will, if you play it right, provide you an opportunity to move into the managerial and executive positions because of what you will learn there.

III. LEADERSHIP

I turn now to some thoughts that I have regarding the qualities of a leader. Although I think of leadership in terms of the state of corporate America right now, specifically the malfeasance that we have witnessed in the last year or so, these are qualities of leadership that fit not just in the corporate community but in whatever you are doing, whether it is law, government, or any other endeavor.

First, from my experience, you should always surround yourself with very qualified people—people who you think are smarter than you are and who have better abilities and better potential than you have. They may work for you. They may be your peers. Whoever they are, they will make you, in the last analysis, look good. The “yes” men or the “yes” women, from whom above all you demand loyalty, are not going to make you successful. You need to have people who will challenge and question you and disagree with you without fear. Those are the types of people you want around you.

Next, you need to recognize that we all have to adapt to change. Change is, it has been said, the only constant with which we live. You must learn how to embrace change. You need only look at what has happened to the practice of law in the last twenty years—even in the last five years. The same thing is happening in business. It is inevitable that change will come; it is a natural process of evolution. Human nature, on the other hand, resists change, but we must deal with it. We must adapt, and we should embrace and benefit from change.

Thinking back almost thirty years to my practice of law, after I got out of trial work and started representing businesses and companies, very few of the businesses that I represented survived. They were either bought or dissolved, or they went into bankruptcy. I wondered what happened—what caused it. I believe now that they could not adapt to change. They were unable to continually re-invent their businesses, their products, their marketing, or the like.

I think that we have been fairly successful within the Coca-Cola system in adapting to change, and we have examples of that around today. The introduction of Vanilla Coke and Diet Vanilla Coke are recent examples of not staying with the same product, as valuable and significant as we hope that Coke Classic and Diet Coke will continue to be. Consumers consistently ask for something new and different, so you must be able to provide that. Ultimately, your ability to adapt to changing circumstances can be an asset and something upon which you can capitalize if you are given the opportunity.

The next quality of a successful leader is understanding that you need to employ people who get things done. These may not be the brightest or the strategic thinkers, but they are people who are doers and who get things done. Whether it is capitalism or purely the practice of law, results are what ultimately count. Focus on people who execute rather than those who are process-oriented.

A good example is from my first year of law school. In anticipation of a

very, very difficult contracts exam under Professor Forest Lacey, everybody was worried about finishing the exam. It was an essay exam that weeded out a lot of students, and we were all ready for a grueling experience. About half way through the exam, one of my classmates stood up and turned in his exam. We were flabbergasted; this guy finished in an hour and a half the most difficult exam that first-year students had to take. About fifteen minutes later, Professor Lacey tapped on the table and said, "He made a B." So, everybody started turning in their exams as fast as they could. Clearly, the process of the exam was not nearly as important as the results, and he demonstrated that.

Still, we have a tendency, I think, to surround ourselves as a society and in business with bureaucracy because there is security in that. It is human nature. The process may take a long time, but the process is important; there is comfort in not having to reach a final decision. So, do not be afraid to make a final decision. At the end of the day, you will fall back on your intuition—your gut instincts—for making those decisions. Sometimes they are tough, but you cannot be afraid to make them.

Another quality of leadership that I believe is important is that of diversity—embracing people outside your own comfort zone. Remember that whatever your background, you yourself are not a complete reflection of society, and the old country-club mentality that places artificially high value on whom you know simply does not work anymore. Those people have limited vision, and they limit the scope of possibilities. We all need to continue to ask ourselves whether we have any inherent, subconscious barriers that restrict our ability to accept the brightest and the best from among a wide array of diverse races and backgrounds. It is those diverse backgrounds and cultures that will absolutely add value to our enterprises, whether they are business or law, in ways that we cannot entirely understand or comprehend.

The assets that drive our businesses or our law practices are the people. They are not the machines, and they are not the production facilities. They are not the Coca-Cola trucks. They are the people. As a businessman in charge of or at least partly responsible for brands that are important to people, like Coca-Cola, I have come to understand and appreciate that the public has an interest in those brands. They are part of the public domain. The idea that the Coca-Cola brand, for example, is owned entirely by our shareholders is just not true. We found that out when we tried to change the formula back about fifteen years ago. The public had an interest in Coca-Cola, and we had to back off that change. I am glad we did. The public was right, and we were wrong.

I think that a current example of this misunderstanding is the idea that the Augusta National Golf Course owns the Masters Golf Tournament. The Augusta membership will find out that their ownership is limited. The public has an interest

in the Master's Golf Tournament, and the public will to win that one, too, I believe.

There is a book that many of you may have read written by Jim Collins, a business academic who researched the qualities of CEO leadership in companies that were particularly successful.² The book, *Good to Great*, is not, however, limited in scope or value to people in the business world. I recommend it to you because it is very basic. Qualities of leadership that he identified in particularly successful companies were very, very different from the image most people have of a corporate CEO. Among the qualities that he identified were modesty, genuine attention to others, and a self-deprecating manner. Successful CEO's are not boastful and seem to act in a very quiet manner with calm determination. They generally stay behind the scenes and rely on standards and character rather than charisma to motivate people. They are people who tend to channel ambition into the company and not into himself or herself. They set up successors—the next generation of business leaders within their companies—from internal candidates.

To come almost full circle, they tend to surround themselves with people who are smarter and more talented than they are. However, when things go poorly, they tend to look in the mirror. When things go well, they look out the window to apportion credit for success to others. In other words, they take responsibility when things go poorly, and they credit others when things go well.

So, that is not the commonly understood, media perception of a big ego CEO. It is somewhat contrary, I think, to American culture where we pay a lot of attention to people with star quality, whether in entertainment, sports, or business. But, I argue that the qualities that Jim Collins identified measure leadership not only in business but in law, government, academia, and elsewhere. It has been said that women probably tend to exhibit these qualities more than men do because they are not complicated by the testosterone factor. And, that may be a good reason why more and more women are becoming CEOs.

IV. CORPORATE MALFEASANCE

I submit to you that few of the Enron, Adelphia, InClone, and WorldCom executives have those qualities. In explaining what we have witnessed in corporate America over the last year or so, we hear the term “greed” mentioned frequently, but I do not think that greed completely explains the current rash of corporate scandals. Nor do I think that arrogance fully explains it either. There seems to be a sense of immunity or omnipotence permeating much of what we have seen. Those are

² See generally JIM COLLINS, *GOOD TO GREAT* (2001).

qualities, of course, very foreign to Jim Collins' research. The idea of immunity or omnipotence results from the belief or assurance that somebody will always fix the problem. Brilliant lawyers, investment bankers, and spin merchants are relied on to provide cover. How else do we explain the lack of sophistication of most of these improprieties?

For example, you unload your shares of stock when you learn that the FDA intends to turn down your drug testing. Nobody else knows that but you. Yet, someone who is not an executive cashes out on \$250,000 worth of shares, whether or not the shareholder may have been in violation of the insider-trading rule. This jeopardizes the reputation of the shareholder, whose shares of her own company are worth many hundred times more than \$250,000. Or, in case of Tyco, you try to avoid a couple of million dollars in sales tax payment, which you could easily afford from your multimillion-dollar net worth. Or, in the case of Adelphia, you just simply have the company write you checks when you need the money.

I submit to you that these crimes, or apparent crimes, are comparable in sophistication to your ordinary petty criminal who robs a convenience store while the police SWAT team is pumping gas outside. It is just amazing. Clearly, a feeling of immunity or omnipotence at least contributed to that conduct; perhaps society's checks and balances broke down to let those conditions exist. But, as a society, we are strengthening the checks and balances through legislation and regulation. We should be careful not to overreact, thereby limiting free enterprise and free society generally, but I do not believe that we have so far.

I truly believe that the vast majority of business executives are honest and hard working, despite all of the messages from politicians and the media. I do not think that there is a pervasive breakdown in character and ethics; even though the American media is continuing to feast on what is certainly a disconcerting problem.

V. CONCLUSION

To conclude, I believe that we are all blessed to live in a free country where we have the freedom to make choices, to maximize our talents and abilities, and to make changes when we want to without the same constraints that limit many other societies. So, I just urge you to keep an open mind to change, to relish it, to use it for your benefit, and above all, to have some fun as you adapt to those changes wherever they may take you.