

PLANO

**Executive Night
Seminar**

Thursday,

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New Orleans, Louisiana

Ethics for the Oil and Gas Lawyer and Landman in Closing the Deal

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Introduction

<http://www.youtube.com/watch?v=ml2Ae2SIXac>

Regulation of Professionals

NOTABLE QUOTES FROM “THERE WILL BE BLOOD”

Scene 1 - Going to the People:

Daniel Plainview was an oil man – He asked the people of Isabella county to drill their lots. All the rest will be speculators to men trying to get between you (the “landowner”) and the oilman to get some money that ought by rights come to you.

Scene 2 – Insider Information (The Squealing Brother)

Plainview: [*Paul Sunday has offered to sell Plainview information*] Well, why'd you come to me?

Plainview: I'll tell you what I'll do, son- I'll give you a hundred dollars now, and if it proves to be a promising lease, then I'll give you a thousand dollar bonus.

Paul Sunday: Six hundred dollars.

Plainview: Just tell me one thing to help me decide- what else have you got up there, what do you grow?

Scene 3 – Honest Bargaining??

Plainview: Those areas have been drilled

Eli Sunday: What?

Plainview: Those areas have been drilled.

Eli Sunday: ...no they haven't...

Plainview: Its called drainage. I own everything around it ... so I get everything underneath it.

Plainview: Drainage! Drainage, Eli Drained dry,
you boy! If you have a milkshake and I have a
milkshake and I have a straw and my straw
reaches across the room and starts to drink your
milkshake. I drink your milkshake! I drink it up!

Scene 4 – Walking Out

Prescott: [*Plainview has just stormed out of a town meeting*]

Mr. Plainview? No! Mr. Plainview, where are you going?

Plainview: I don't need the lease, thank you.

Prescott: We need you, we need you to ...

Plainview: Too much confusion! Thank you for your time.

Prescott: No, no, no! There's no confusion! If you just...

Plainview: [*stops in his tracks, stares down Prescott*] I wouldn't take the lease if you gave it to me as a gift.

Scene 5 – Landman and Boss

Plainview: What's this? Why don't I own this? Why don't I own this?

Al Rose: That's the Bandy tract. He was the holdout, when we were doing the buying? He had hoped to speak with you... Can't you just build the pipeline around this tract?

Plainview: Can I build around fifty miles of Tehachapi mountains? Don't be thick in front of me, Al.

Al Rose: I can go to him again...

Plainview: No, I'll go and talk to the man. I'll talk to him, show you how its done.

Scene 6 – Now I want [NEED] your land

William Bandy: I'm Bandy.

Plainview: Uh, yes. Yes. Uh, William Bandy. I'd like to lease your land

William Bandy: I had asked for you to come and talk to me before. When you were leasing land.

Plainview: That's right, yes. My boy's been very sick.

William Bandy: This was before you boy got sick. Now I know that you would like to build a pipeline through my property. Is that right, what I've heard?

Plainview: That's absolutely right. Its an eight-inch pipe. I can be buried with your consent. I guarantee you absolutely no disruption...

William Bandy: God, God has told me what you must do

Plainview: And what is that?

William Bandy: You should be washed in the Blood of Jesus Christ.

Plainview: Oh, but I am. I have been washed, Mr. Bandy, I have been.

William Bandy: It's your only way to salvation, and your only way for what you want. You can take it at the Church of the Third Revelation.

Plainview: I'll pay you three thousand dollars.

William Bandy: I'd like you to be part of our church.

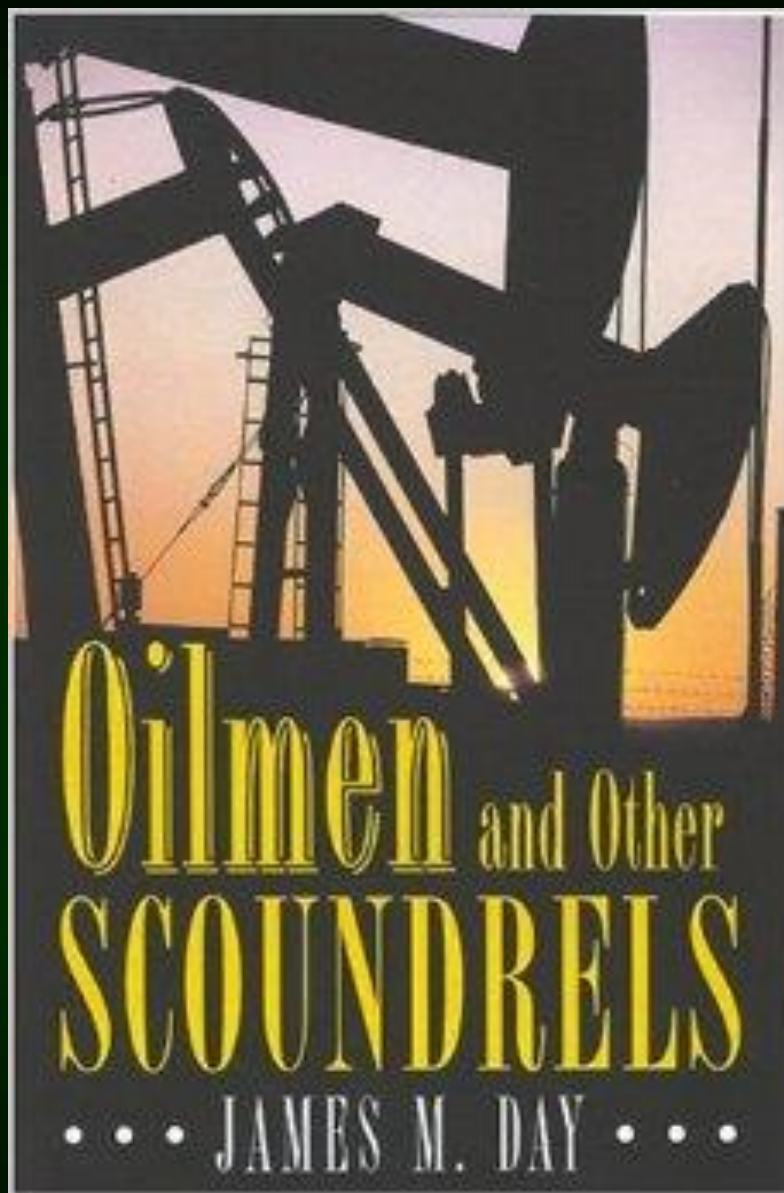
Plainview: I'll pay you five thousand dollars.

William Bandy: Be baptized be forgiven for the sin that you've done.

Regulation of Professionals

- (1) The Model Rules for Professional Conduct for the Lawyers; and
- (2) The AAPL Code of Ethics and Standards of Practice





Introduction

The term “profession” has been used to “describe occupations that require new entrants to take an oath professing their dedication to the ideals and practices associated with a learned calling.”[\[1\]](#)

- Professional - Someone called to do essential public service that can only be done by a person with specialized knowledge.

[\[1\]](#) Deborah L. Rhode, Professional Responsibility: Ethics by the Pervasive Method. 39 (1994).

Introduction (continued)

- Learned Art - An Art/Science that requires both learned knowledge and prudential wisdom.
- Common Calling - A vocation requiring dedication to certain ideals as a way of life as part of a specialized group.
- Public Service - The performance of certain functions necessary to the general welfare or common good.

Introduction (continued)

Perception that there has been a lack of professionalism exhibited by lawyers and landmen.



Introduction (continued)



Introduction (continued)

What Kind of man are you?

Atticus Finch: Do you know what compromise is?

Scout: Bending the law?

Atticus Finch: [slightly bemused] Uh. No. It's an agreement reached by mutual consent. Now, here's the way it works. You concede the necessity of going to school, we'll keep right on readin' the same every night, just as we always have. Is that a bargain?



Introduction (continued)

AAPL Update - Article by Gregory Jessup

“Hey Dad what do you do for a living?”

Introduction (continued)

The ABA Report ends up with this definition of professionalism which is built upon an original definition suggested by former Harvard Law School Dean Roscoe Pound:

A professional lawyer is an expert in the law pursuing a learned art in service to clients and in the spirit of public service; and engaging in these pursuits as part of a common calling to promote justice and the public good.

Introduction (continued)

The American Association of Professional Landmen has provided the following definition for the professional landman/land professional, which is in the context of performance of specialized functions:

“Landwork” shall mean the actual performance or supervision of any one or more of the following functions:

Introduction (continued)

A. Negotiating for the acquisition or divestiture of mineral rights.



B. Negotiating business agreements that provide for the exploration for and/or development of minerals.



Introduction (continued)

C. Determining ownership in minerals through the research of public and private records.

D. Reviewing the status of title, curing title defects, and otherwise reducing title risk associated with ownership in minerals.



E. Managing rights and/or obligations derived from ownership of interests in minerals.

F. Unitizing or pooling of interests in minerals.

Introduction (continued)

“Land Professional” shall mean a person who derives a significant portion of his income as a result of performing Landwork.

“Landman” shall mean a Land Professional who has been primarily engaged in negotiating for the acquisition or divestiture of mineral rights and/or negotiating business agreements that provide for the exploration for and/or development of minerals.

Regulation of Professionals

Lawyers:

(i) Model Rules of Professional Conduct.

(a) House of Delegates of the American Bar Association ("ABA") adopted Model Rules on August 2, 1983.

(b) State-by-State adoption of ABA Model Rules [or modified versions]. Louisiana adopted a modified version on December 18, 1986 effective January 1, 1987. See, Chapter 4 of Title 37 of the Louisiana Revised Statutes.

Regulation of Professionals (continued)

(ii) Articles of Incorporation of the Louisiana State Bar Association. See, Article 16 of the LSBA - Articles of Incorporation.

(iii) Statutory Provisions: La. Rev. Stat. 37:211:

The Louisiana State Bar Association is created and regulated under the rule-making power of the Supreme Court of Louisiana, pursuant to a memorial addressed to the court by the legislature in Act 54 of 1940.

Regulation of Professionals (continued)

Land Professionals:

(i) Bylaws of American Association of Professional Landmen ("AAPL"), adopted June 16, 1978, amended June 11, 1999. Article V. Section 3.A.4 Applicant must execute such documentation as AAPL may require applicant's willingness to be bound by and abide within the AAPL Code of Ethics and Standards of Practice.

(ii) AAPL Code of Ethics.
(Article XVI of Bylaws)

(iii) AAPL Standards of Practice

Standards of Practice

The Bylaws of the American Association of Professional Landmen (AAPL) provide that a Code of Ethics has been established “to inspire and maintain a high standard of professional conduct” for the members of the Association. The Code of Ethics is the basis of conduct, business principles.

A. Fair and honest dealing with landowners, industry associates and the general public so as to preserve the integrity of the profession (Article XVI, Section 1);

Standards of Practice (continued)

B. Adherence to a high standard of conduct in fulfilling his fiduciary duties to a principal (Article XVI, Section 2);

C. Avoiding business activity, which may conflict with the interest of his employer or client or result in the unauthorized disclosure or misuse of confidential information (Article XVI, Section 2);

D. Performance of professional services in a competent manner (Article XVI, Section 2);

Standards of Practice (continued)

E. Adherence to any provisions of the Bylaws, Code of Ethics, or any rule, regulation, or order adopted pursuant thereto (Article V, Section 9);

F. Avoiding the aiding or abetting of any unauthorized use of the title “Certified Professional Landman”, “Registered Land Professional”, “P Land”, or “CPL/ESA” (Article V, Section 9); and

G. Avoiding any act or conduct, which causes disrespect for or lack of confidence in the member to act professionally as a land professional (Article V, Section 9).

Continuing Education

ARTICLE III OF THE PLANO BYLAWS SET OUT
THE PURPOSE –

“TO PROMOTE AND ADVANCE THE ART
AND SCIENCE OF THE PROFESSION OF
PETROLEUM LANDMEN.”

Continuing Education (continued)

WE LEARN IT BY EXAMPLE THAT WE TAKE THE HOLISTIC APPROACH AND MAKE A PART OF THE LIFESTYLE.

IT JUST MAKES COMMON SENSE.

Continuing Education (continued)

THE FAMOUS FRENCH WRITER AND PHILOSOPHER NOTED:
“COMMON SENSE IS NOT SO COMMON”



Continuing Education (continued)

Our reputation keeps us in business.



The Land work and legal work associated with the energy field is within a very small community.



“Nice guys finish last”



Being nice, courteous, polite and respectful does pay. I am not suggesting that you don't hold firm in negotiations.

Continuing Education (continued)

Perception of a Landman from the negotiation and consummation of the deal.

There are many times ethical dilemmas which often you do not consciously think about. But it is a gut check. A first reaction



Continuing Education (continued)

Do the right thing

Do unto others as you would have them do unto you.

State Definitions of Professionalism

The most common definition of professionalism relates to the courtesy and respect that lawyers/landmen should have for their clients, adverse parties, opposing counsel, the courts, court personnel, witnesses, jurors and the public.

“Professionalism addresses the subject of what is expected of lawyers (landmen) as opposed to what is required by our ethics rules.”

Continuing Education (continued)



Continuing Education (continued)

Famous in France for his Davy Crocket ROLE,
French distributors on posters, in TV
programmers

“Fess” Parker in French means “buttocks” or
“bottom”

“Fier” means proud. As in a proud American hero.

Continuing Education (continued)

“Be always sure you are right then go ahead.”

Continuing Education (continued)

“Landmen determine who owns the land and its component part, surface and minerals, without us, the search for energy would go nowhere. Frequently, companies hire attorneys to do our job but they really aren’t as qualified as we are, if we are trained, experienced and competent.”



Continuing Education (continued)

“Negotiator and facilitator of oil and gas deals”



Continuing Education

“The Landman is the heart and soul of the oil and gas industry. The heart by getting the deal started and always keeping the deal going, and the soul for keeping it honest.”

**WE ARE BOUND
TOGETHER WITH MOST
OF THE OILMEN IN THIS
ROOM.**

QUOTE-ID.COM

Fu Chengyu

a) Annual Requirements

Lawyers:

Conversion of CLE Credit Hours

12.5 credit hours per year including (i) 1 credit hour of ethics for each 1-year reporting period; and (ii) not less than 1 credit hour of professionalism for each 1 year reporting period - Carryover of a maximum of 8 hours from previous year, except the ethics and professionalism hours.

Bar still requires a total of 750 minutes per year in line with the majority of states. Ethics and professionalism require a full 60 minutes

See, Supreme Court Rules, Rule XXX, Part H, CLE Rule 3(C) as amended, effective January 1, 2003.

Definitions

Lawyer:

Legal Ethics:

Concerns the standard of professional conduct and responsibility required of a lawyer. It includes courses on professional responsibility and malpractice. It does not include such topics as attorneys' fees, client development, law office economics, and practice systems, except to the extent that professional responsibility is discussed in connection with these topics.

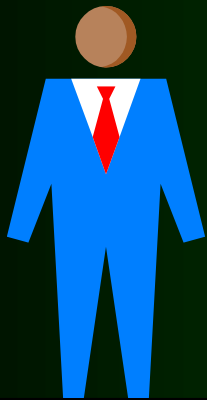
Definitions (continued)

Landman:

Code of Ethics - established to inspire and maintain high standard of professional conduct - the standard of professional conduct and the guiding principles and ideals are mandates. The standards impose obligations beyond those of ordinary trading - grave social responsibility and a duty to which the land professional should dedicate himself .

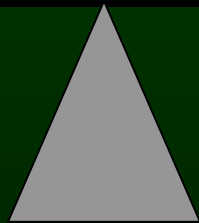
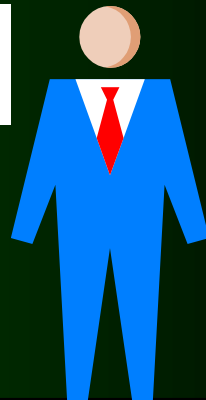
Distinctions

Legal ethics sets forth the standards of conduct required of a lawyer; professionalism includes what is more broadly expected.



ZEALOUS
ADVOCATE

STATESMAN
ADVOCATE



The zealous advocate - is one who is primarily interested in winning the case for the client (or sometimes for himself) at any costs.

In such zeal, the advocate ignores or colors the truth - fair play, cooperation, civility, courtesy and dignity do not enter the picture - that is why the Model Rule 1.3 adopted by Louisiana deleted the reference to “zeal”. Instead the “Lawyer shall act with reasonable diligence and promptness in representing a client.”

There is also the other model - the “statesman advocate.”

1. Fairness to opposing parties (Model Rule 3.4).
2. Confidentiality (Model Rule 1.6).

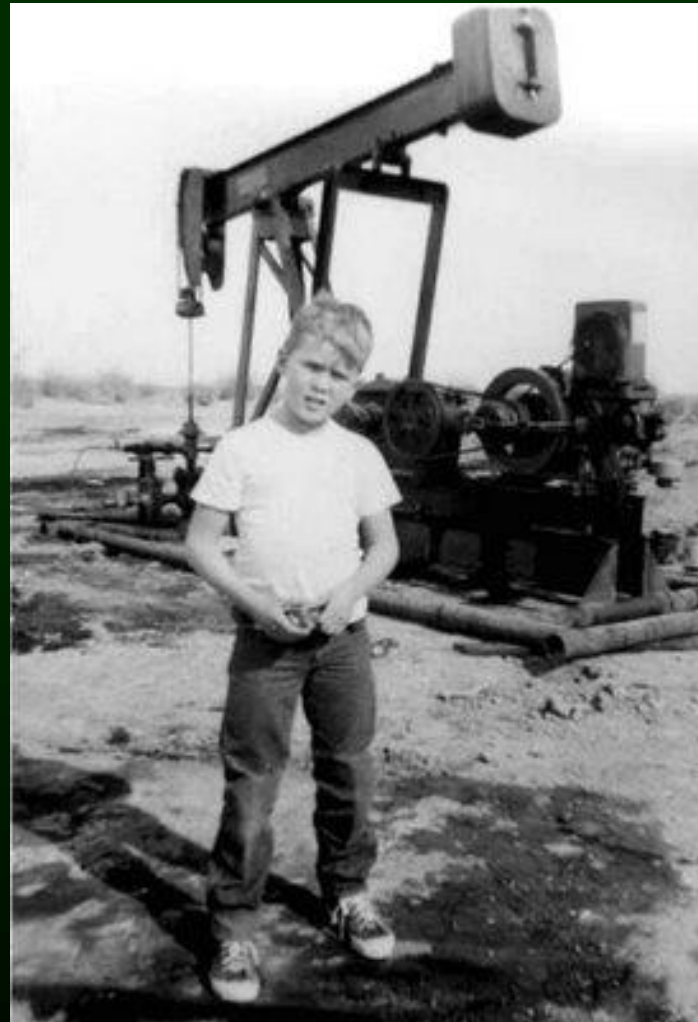
Walk out

Bankruptcy-Win/Win

When it just has to get there overnight

Redlining the document

Coin Toss



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