



Hon. Gregory W. Alarcon



Oscar Wilde

AN IDEAL MENTOR
FOR A TRIAL ATTORNEY,
HIS LIFE EXPERIENCE
OFFERS A CAUTIONARY
TALE ABOUT PURSUING
A CASE YOU CANNOT WIN

Wouldn't it be great to have one of the most brilliant men who ever lived be with you in the courtroom, supporting you through each of your trials, with witty and helpful advice? What if you had at your fingertips a writer who, in a one-volume book of his entire works, could become a constant inspirational source for quotes, allusions, and stories that you could seamlessly blend into trial strategy? Finally, what if one man's triumphs and failures, including those in a courtroom both as a plaintiff and, as a defendant, could help shape your approach to trials and could effectively carry you through your entire career via life lessons he experienced in his extraordinary life? I know just the person: Oscar Wilde.

Background

Oscar Wilde was a brilliant student, with scholarships at Trinity College and later at Oxford University. He graduated at the top of his class in classical literature.

His first writings after college were not the witty comedy of manners plays, the most famous of which is *The Importance of Being Earnest* (1895) or his novel *The Picture of Dorian Gray* (1890), but rather two serious plays, a handful of poems, and some fairy tales.

Career revelation – The United States

It was later, almost by happenstance, that Oscar Wilde was provided an opportunity that changed the trajectory of his career. In fact, what happened to Oscar Wilde in his early career mirrors the many early opportunities available to lawyers that can positively shape their careers.

Oscar Wilde was a follower of the Aesthetic Movement – a 19th century movement which advocated “art for art’s sake.”¹ The movement became so noteworthy that the masters of light opera, Gilbert and Sullivan, created a comic opera titled *Patience* (1881).

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One of the leading characters in *Patience* named Bunthorne, bore a striking similarity to Oscar Wilde in his mannerisms and appearance. *Patience* was a hit in Europe. The promoters wanted to match that success in the United States. The challenge for the producers was to give potential ticket buyers in the United States a crash course in the Aesthetic Movement to entice potential audiences to buy tickets for *Patience*. While others might be insulted being lampooned as a comic character in *Patience*, Oscar Wilde seized the opportunity and turned it into a positive experience. If nothing else, we learn from Oscar Wilde his genius for self-promotion should be a studied skill for any lawyer's tool kit. What better way to explain aestheticism than to hire the 27-year-old Oscar Wilde as your spokesperson to travel through the United States, giving lectures extolling the benefits of appreciating art for its own sake?

Oscar Wilde toured the United States for a year and, through his lectures, developed a gift for public speaking. He refined his ability to give the quick remark/response that was to transform his career from a relatively unknown writer to a master that would command the London stage with his wellspring of witty remarks. Mark Twain and Charles Dickens are two other examples of writers who were able to excel at speaking tours that improved their popularity, developed their public speaking skills, and enhanced their financial standing.

It is easy to see Oscar Wilde's education as a lesson for all lawyers who might take one path early in their career and use their experience to enhance a career as a lawyer. When I began as a judge, I was continually impressed by lawyers from large law firms who would donate their time to join the TAP (Trial Advocacy Program) at the Los Angeles City Attorney's Office, so as to skip the line in a large civil firm in that they tried their first cases at the beginning of their career. Additional opportunities such as volunteering for the Constitutional Rights Foundation can give young lawyers the opportunity to work with middle school and high school students

to help them understand the law, and provide the added benefit of improving communication skills with future jurors.

The challenge of being civil: to have the trivial taken seriously by jurors

The Importance of Being Earnest, Oscar Wilde's most famous play, has a curious subtitle affixed to it: "a trivial comedy for serious adults" a phrase which is easy to pass as an example of Wilde's whimsy; however, the play actually has a deeper message applicable to lawyers.

While a classic comedy of manners, the underlying conflict in the play is the two main characters have both invented alter egos to hide behind when they believe it necessary to live for a moment not restricted by social conventions. Applying the subtitle "trivial comedy for serious adults" gives a keen insight to the task of litigating a civil case to 12 jurors and making them believe their case should be taken seriously. Aside from major tort cases with catastrophic injuries, trial lawyers have the challenge of taking the relatively small incidents that form litigation, giving significant human portraits to attach to the facts and amplifying the themes to become relatable to make a jury care.

When I read the joint statement that lawyers prepare, I am often surprised how bland they are, making it difficult for jurors to pay attention. I have always encouraged mini-opening statements which give the lawyers a chance to put some substance on the bare facts. Now that the 2018 amendments to Code of Civil Procedure section 222.5 encourage a brief opening statement to the entire jury panel, I would expect lawyers to prepare one that encourages interest with the jurors. Often, I am surprised how much the brief (or mini) opening statements resemble the same bland joint statements traditionally submitted by both sides. We should be encouraged by Oscar Wilde to take a civil case and use storytelling skills which emphasize universal themes to make jurors interested and alert, care about your client, seek to resolve the conflict, and to willingly donate part of their lives to sit through your client's case.

There are two types of lawyers: Which are you?

"It is absurd to divide people into good and bad. People are either charming or tedious."

(Lady Windermere's Fan, Act IV)

Charm is the skill most remembered by jurors. A concern for other people (the jurors) and the ability to smile and speak to them as equals, are skills that jurors often comment to me about after a trial. A charming lawyer respects a juror and can make each juror believe that he or she is important.

Unfortunately, tediousness in court is a criticism I often hear from jurors after a trial. In trial preparation, counsel should do what editors do for magazines; that is, reduce all questions, opening statements, and arguments to that which is absolutely necessary and edit out anything else that is unnecessary and repetitive. If you speak to jurors after a case has concluded, I doubt you will ever hear a juror express dismay that the trial's voir dire examination, witness examinations, and arguments were not long enough. The next time you enter a courtroom, you should think about how Oscar Wilde divides people and on which side you fit: charming or tedious.

Ultimately, you should remember Oscar Wilde's alternative method of dividing people: "Some cause happiness *wherever* they go; others *whenever* they go." Take inventory so that you will become a lawyer that can cause happiness wherever they go.

Your client's point of view should guide the case

"We are all in the gutter – but some of us are looking at the stars."

(Lady Windermere's Fan, Act One)

It would be difficult to find a trial practice text or a creative writing book that does not recommend presenting your case from the point of view of your client, or, in literature, that of the protagonist. Point of view is a key issue in all trials. Most trials quickly become a challenge to have the jury see the case from each side's point of view. Each side

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does its best to sway the jurors to one side or the other, through witnesses, evidence, and argument.

Opposing counsel will take great efforts in showing your client in the most negative light. A terrific comeback is to present all the contrary evidence and then mention an anecdote from Oscar Wilde from one of his plays; Wilde had a character made to feel inferior and belittled no matter what he did. He looked at the other characters and replied “We are all in the gutter – but some of us are looking at the stars.” Counsel could state that his or her client, like the character in that play, is also “looking up at the stars.” In literature, it is important that the reader knows the protagonist and sees things from his unique perspective. Similarly, a lawyer must see his client’s point of view and that the jury can appreciate this perspective.

Be honest and don’t rely on a Bunbury to escape court obligations

Bunbury is a fictitious character in *The Importance of Being Earnest* who is used by Algernon as an excuse to get out of social obligations. Bunbury is always ill, needs immediate attention and lives in the country. The end of the play reveals this lie and other falsehoods created by Algernon and his friend Jack, but once the lies are revealed, happiness and a double marriage end the play.

As a judge for over 25 years, it is difficult not to think about Bunbury when I receive excuses for not being ready for a trial set a year previously, based on a statement in an ex parte motion which later proves to be not entirely accurate. One of the most common scenarios is counsel stating they are committed to be engaged in another courtroom. Many times I have investigated the facts, spoken to the judge, and have found the information not accurate. The duty of candor to the court has been emphasized in the rules of professional conduct. Counsel should assume that most courts will investigate and want proof of everything placed in a declaration. I would urge all counsel to remember the importance of candor. (Rules of Professional Conduct § 5-200, Bus. and Prof. Code § 6068d.) My first

inclination is always to believe that all counsel, as officers of the court, will be completely candid with me. When I see a statement later proved not entirely accurate, I want to scrutinize every assertion made and ask for additional information to justify any further assertions.

In *The Importance of Being Earnest*, Algernon tries to explain his falsehoods by stating, “The truth is rarely pure and never simple.” In court, it is best to acknowledge the complete truth, even if it does not constitute the perfect excuse. If there is one quality judges talk about with the utmost admiration, it is the honesty and veracity of certain lawyers who strive to fulfill the highest goals as officers of the court.

We don’t know everything even though we may think we do

“The old believe everything, the middle-aged suspect everything, the young know everything.”

(Phrases and Philosophies for the use of the Young (1894))

I often hear the phrase that there is nothing worse than youthful arrogance. James Barrie, the author of Peter Pan, was so inspired by the above Oscar Wilde quote, his own quote, in a similar vein, is even more famous: “I am not young enough to know everything.” (The Admirable Crichton, 1902.)

These quotes help me understand human nature. None of us knows everything but not all of us are willing to admit that. I admire any lawyer who will simply acknowledge they do not know a case holding or certain facts, but lets me know he or she will find out and file a pocket brief. However, some lawyers insist they are correct only to be discovered, with just a little research, to be incorrect. It is possible to have a firm grasp on the facts and law in any case a lawyer is handling and still not know everything: showing candor by admission of not knowing a certain fact, or by showing the tenacity to find the fact, is an almost certain way to garner a tremendous amount of respect from the bench.

While Oscar Wilde never lived past middle age, dying at 46, his insight into

the human mind and its grasp on the certainty of being right, particularly at certain ages, is a helpful insight to understand others and a reminder to monitor one’s own conduct, regardless of age.

Jurors want a truthful lawyer, not a clever one

In *The Importance of Being Earnest*, Jack remarks to Algernon about his frustration with a world full of clever people, or, at least people who think they are clever:

“I am sick to death of cleverness. Everybody is clever nowadays. You can’t go anywhere without meeting clever people. The thing has become an absolute public nuisance. I wish to goodness we had a few fools left.”

(The Importance of Being Earnest, Act One)

It is important to note the two terms used for contrast: being clever and being a fool. The cleverness that Algernon refers to appears to suggest one who speaks from a place of elitism, which values wit over sincerity and is engaged in a constant battle of one-upmanship.

Often, when jury selection begins, it appears to resemble a contest between two lawyers to decide who can make the most clever comebacks, sly asides, and witty banter with the jurors to ingratiate themselves with the jury panel.

However, from the vantage point of the bench, it is clear that cleverness or slickness is not a quality the majority of jurors value. Jurors want lawyers to act like real people who don’t talk like lawyers. Jurors find sincerity irresistible.

But why would anyone want there to be more fools? The plays of William Shakespeare, likely Wilde’s greatest literary mentor, filled his plays with fools who only spoke the truth, even if the truth was impolite.

A good example of a Shakespearean fool is the Fool in King Lear, who is a factual witness to all of the moments in the play, and provides commentary to the action, to the point that he even ridicules King Lear’s actions, which led to the destruction, of his family, his kingdom,

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and finally, himself. Another example is the gravediggers in Hamlet, who, with humor, have a clear vision of the actions in Denmark and provide sobering comments on the actions of all the main characters, including, Hamlet, who introduces him to the skull of Yorick, Hamlet's fool, who inspires one of Hamlet's most famous soliloquys. These fools are characters that have a crystal clear perception of reality and are fearless in revealing their truths.

That is the type of fool that all lawyers should aspire to be, the one person in the courtroom who understands what is transpiring and is not afraid to let the jury know. This type of honesty, along with some humor, is refreshing to the audiences in Shakespeare, the characters in *The Importance of Being Earnest*, and the jurors who will hear your next case.

Be the producer and the director of your case

"The world is a stage, but the play is badly cast."

(Lord Arthur Savile's Crimes (1887))

While lawyers cannot choose the sequence of every aspect of the case, they can still have an integral part in preparing, presenting, and logically allowing a case to unfold to be the most persuasive for a jury.

On the difference between drama in the theater and real life, or in our case, trials which seek to re-create but a snippet of real life, Oscar Wilde said, expanding on the quote from William Shakespeare's "All the World's a Stage" monologue from *As You Like It*.

The full quote from Oscar Wilde's short story below typifies the dilemma every lawyer faces when deciding which witness to call, what order to call them, and how to prepare them to be convincing for the jury. Real life is different from the theater:

Actors are so fortunate. They can choose whether they will appear in tragedy or in comedy, whether they will suffer or make merry, laugh or shed tears. But in real life it is different. Most men and women are forced to perform parts for which they have no

qualifications. Our Guildensterns play Hamlet for us, and our Hamlets have to jest like Prince Hal. The world is a stage, but the play is badly cast.

Given those limitations for presenting real life in the condensed form that constitutes a trial, lawyers should borrow the creative qualities of directors and present the case for the maximum impact, letting each witness logically flow, and be a ringing endorsement of a verdict in favor of their client. So often the presentation of witnesses seems guided by considerations that fail to focus on the jurors' understanding of the case. Ultimately, some sacrifices should be considered to create a clear and effective picture of the case for the jury.

Consider all consequences in filing a lawsuit

No man is rich enough to buy back his past.

(An Ideal Husband)

Oscar Wilde's rise was swift but his fall was even swifter; his fall has been the subject of a number of films and plays. Films about Oscar Wilde's life including the trials are Oscar Wilde (1960), *The Trials of Oscar Wilde* (1960), and *Wilde* (1997). Plays about Oscar Wilde include Oscar Wilde (1936), *Feasting with Panthers* (1974) *Gross Indecency: The Three Trials of Oscar Wilde* (1997), and *The Judas Kiss* (1998). While he ultimately was prosecuted for private sexual acts, illegal at the time but rarely prosecuted, and was given an unjustly harsh sentence, Oscar Wilde started the sad sequence of events by instigating the first lawsuit that would lead to his downfall.

In 1895, Oscar Wilde was on the top of the world. A number of his plays were running simultaneously in the West End; he had money; he had fame. He also had a wife and three children, but nonetheless carried on a lengthy affair with a man 16 years his junior, Lord Alfred Douglas. Lord Alfred Douglas' father, the Marquess of Queensberry, the inventor of the Queensberry rules of boxing; despised the fact Oscar Wilde was having an affair with his son and was

determined to stop them. (The Marquess of Queensberry has found a new life, so to speak, as a cartoon character, voiced by actor Jim Rash, in the Adult Swim cartoon *Mike Tyson Mysteries*). The Marquess planned to humiliate Oscar Wilde by presenting a calling card to Wilde's favorite club, the Albermarle, with the words "To Oscar Wilde, posing as a sodomite (sic)."

What to do with this insult? Did it matter to Oscar Wilde that the written words on the calling card had some truth to it? Apparently not as Wilde decided – at the urging of the embittered son, Lord Alfred Douglas – to sue the Marquess on charges of criminal libel. In 1895 London, a private person could prosecute for criminal libel.

People who do not know a great deal about the Oscar Wilde trials, often believe he was initially prosecuted and persecuted by Victorian England. Tragically, had Oscar Wilde never sued the Marquess of Queensberry, he never would have been later prosecuted and imprisoned.

The trial proceeded with Wilde given the hopeless burden of proving that the statement of the Marquess of Queensberry – that Oscar Wilde was a homosexual was untrue when, in fact, it was true.

Yet, despite this burden, Oscar Wilde decided to move forward with this lawsuit because of pressure from Lord Alfred Douglas and the vain belief that he could outsmart others in court.

If you have the chance to peek at a judge's blotter on the bench, you will find phrases, quotes, and pep talk words. Under mine, is this quote, attributed to anonymous:

Pray one hour before going to war,
Two hours before going to sea,
Three hours before getting married,
And four hours before going to court.

This quote serves as a constant reminder of the absolute seriousness and thoughtfulness that must be considered in filing a case. Beware of going to trial and make sure the case is proceeding for the right reasons, with a sincere belief that the case has merit and that the other party is responsible.

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When the Oscar Wilde trial went forward, it was evident that the defense had uncovered a number of male prostitutes who could severely damage Wilde's claim of criminal libel.

During the trial, Oscar Wilde was called as a witness to establish he received the allegedly libelous message. He was subjected to a cross-examination that has become the most memorable moment of the entire proceeding. There are three lessons from the trial that should be remembered by all lawyers who prepare their witnesses before testifying.

Tell the truth, even if you do not like the truth

When Oscar Wilde testified in his own defense, he said he was 39 years old. He wasn't. He was 41. Rather than his own attorney correcting the misstatement, the truth was not revealed until cross-examination, by Edward Carson, a former Oxford classmate of Wilde, when Oscar Wilde was forced to admit that he had not told the truth about his age. Even though this might seem a small admission – it is precisely the type of opening question and answer that can taint the remainder of the examination and begin the process of damaging the credibility of the witness.

Beware of flattery on cross-examination

After the damaging volley regarding his falsehood about his age, the cross-examination of Oscar Wilde began and appeared to be an intellectual sparring about his literature and writings. To this, Oscar Wilde gave lengthy and witty answers that fill paragraphs and even pages. However, Edward Carson's tactic abruptly changed from this intellectual discussion for which Oscar Wilde spent a lifetime preparing for answers to philosophical questions of art and literature, to questions about sexual acts with male prostitutes. Going from relatively soft questions to challenging questions proved a lethal tactic for Edward Carson.

Don't volunteer on cross-examination

The most time-honored rule for cross-examination is not to volunteer anything; just answer the question. It is unlikely his counsel properly prepared Oscar Wilde. Instead of simply answering the question asked, he expanded his answers and volunteered additional information. One of the subjects, Walter Granger, would become the subject of textbook examples of the dangers of a loquacious witness:

Q: Do you know a young man named Walter Granger?

A: Yes.

Q: How old is he?

A: He was about sixteen when I knew him. ***

Q: Did you ever kiss him?

A: Oh, dear no. He was a peculiarly plain boy. He was, unfortunately, extremely ugly. I pitied him for it.

Q: Was that the reason you did not kiss him?

A: Oh, Mr. Carson, you are impertinent and insolent.

Q: Did you say that in support of your statement that you never kissed him?

A: No. It was a childish question.

Q: Did you put that forward as a reason why you never kissed the boy?

A: Not at all.

Q: Why, sir did you mention that this boy was extremely ugly?

A: For this reason. If I were asked why I did not kiss a doormat, I should say because I do not like to kiss doormats. I do not know why I mentioned that he was ugly, except that I was stung by the insolent question you put to me and the way you have insulted me throughout this hearing.

Q: Why did you mention his ugliness?

A: It is ridiculous to imagine that any such thing could have occurred under any circumstances.

Q: Then why did you mention his ugliness, I ask you?

A: Perhaps you insulted me with an insulting question.

(Herbert J. Stern, *Trying Cases to Win: Cross Examination* (Wiley Law 1993) 352-357.)

Oscar Wilde swiftly lost the case and found himself, like in an old episode of *Perry Mason*, immediately charged with a crime: the offense of gross indecency, and after a guilty verdict, sentenced to two years of hard labor. The conviction destroyed his career and his family and bankrupted him. While he did write some thoughtful pieces afterwards, he never wrote anything resembling the light, witty comedies for which he was famous.

Oscar Wilde placed himself in the position of being a plaintiff in a case he could never win. His legal experience should be a wakeup call to anyone considering whether there are lasting effects in filing and pursuing a lawsuit.

Don't give adversaries the satisfaction of showing them your anger

"Always forgive your enemies; nothing annoys them so much."

Oscar Wilde found that, in taking the higher ground, it gives an adversary nowhere to go. Often in court, I see counsel systematically match each other with sarcasm for sarcasm, snarky comments for snarky comments, and claims of sandbagging with the threats of oppositional sandbagging. It is the rare and wise lawyer who counters hostile comments without sending anything but an olive branch. Nothing is more disarming than a lawyer who refuses to be manipulated by opposing counsel even in the face of anger and accusations.

Oscar Wilde's comedic plays: *An Ideal Husband*, *Lady Windermere's Fan*, *A Woman of No Importance*, and *The Importance of Being Earnest* are filled with characters who refuse to be pushed by others to react in a particular manner. Lawyers should not allow themselves to be manipulated by opposing counsel. Interestingly enough, Webster's dictionary defines "Earnest" (the name from Oscar Wilde's most popular play) as "having a purpose and being steadily and soberly eager in pursuing it." Using that name, Oscar Wilde instructs all of us to be earnest and not let others in

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court divert us from the ultimate goal in serving his or her client.

Weave Oscar Wilde's stories and quotes in closing arguments

Oscar Wilde's writings are a gold mine of material to incorporate into a trial. I would like to give at least two to entice you into further exploring the creative treasures contained in his works.

Oscar Wilde wrote only one novel, *The Picture of Dorian Gray* (1891), a gothic story about a vain and handsome young man who's smitten by a painting completed in his likeness and strikes a Faustian bargain to sell his soul to stay eternally young. The deal is struck and *Dorian Gray* leads a life full of sin and debauchery. However, while he stays young and beautiful, his sins become permanently etched on his portrait, locked away in a room in his home. It would be an effective argument to compare a trial to *Dorian Gray*, where a litigant presents themselves as blameless, but as the trial unfolds, a completely different picture is revealed and it is counsel's job to take the painting out of the locked room and expose the litigant for who he or she really is.

Oscar Wilde wrote nine fairy tales, ostensibly for children, that have highly adult situations and sophisticated morals embedded in them. Any of the nine would work to emphasize a point in closing argument. My favorite – "The Nightingale and the Rose" cries out to be used by an attorney who wants to analogize their client as doing everything he can to satisfy all that has been asked by the opposing party only to be betrayed.

In the fairy tale, a young student is in love with a young woman who will only go to a dance with him if he gives her a red rose. The problem is there are no red roses and he sits dejected by a tree when a nightingale overhears his dilemma and decides to find a red rose for him. The tree instructs the nightingale the only way to find a red rose is to take a white rose and to pierce her chest with a thorn so that the white rose can become red. The next morning, the student finds the red rose in his garden and picks it, missing the bird on the ground who sacrificed her life so that the student can join his love and go to the dance. The student presents the rose to the young woman, who turns him down, saying it clashes with her blue dress, and that another young man gave her jewels. The student leaves sadly, drops the red rose in the street, and a cart quickly runs over it.

This dark story is compelling in illustrating the sacrifice of an individual for another, much like many litigants in trials I have presided over. If counsel were to craft such a story, or one of the many others among Wilde's stories, the jury would have a captivating structure to understand the story of your client.

Conclusion

I keep the complete works of Oscar Wilde (1216 pages in one volume), in chambers for inspiration. For counsel, Wilde's works contain a wealth of material: quotes, stories, and plays to craft into trials. While he is known for his light-hearted and witty quotes, there is depth to his works that could be rediscovered by new readers seeking a creative spark, and his life – in particular, his own

encounters with the legal system, is a sobering reminder of the serious consequences that should be considered before any lawsuit is filed.

Judge Gregory W. Alarcon has been a judge for over 25 years. Before that, he was a deputy attorney general for the State of California, a deputy district attorney for Los Angeles County, and an assistant United States Attorney for the Central District of California. Judge Alarcon received a J.D. from Loyola Law School in 1981 and a B.A. from UCLA. For the past 28 years, he has been an adjunct professor at Pepperdine University School of Law teaching trial practice and related subjects. He is also active in training and educating new judges and teaching ethics to all judges throughout the state. He is a frequent lecturer on various topics on trial issues including subjects such as "Lessons from Landmark Trials," "Judicial Personalities," "Creative Solutions for Keeping and Motivating Jurors," "Coping With Judicial and Lawyer Stress," "Civility in Court," "Hamlet for Lawyers," "Ideal Mentors for the Courtroom" and many others. He has written numerous articles on legal issues for lawyers and judges. In 2013, Judge Alarcon was given the 2013 Constitutional Right's Foundation "Judge of the Year" award and a Judicial Excellence award from the Mexican American Bar Association. He has co-written a C.E.B. Action Guide instructing lawyers how to present evidence at trial.

Endnote

¹ The motto of Metro-Goldwyn-Mayer uses the same phrase in Latin, *Ars Gratia Artis* above Leo the Lion in the logos shown prior to the main titles of a film.

