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| |  | | --- | |  |  |  |  |  |  | | --- | --- | --- | --- | | **Taunya Lovell Banks** is Jacob A. France Professor of Equality Jurisprudence, University of Maryland School of Law     |  | | --- | | **Read other reviews:**  [Paul Bergman](http://docs.google.com/practice_bergman.htm)  [Carrie Menkel-Meadow](http://docs.google.com/practice_meadow.htm)  [Jeffrey Thomas](http://docs.google.com/practice_thomas.htm)  [George Cardona](http://docs.google.com/practice_cardona.htm)  [Official site](http://abc.go.com/primetime/thepractice/index.html)  [Internet Movie Database](http://www.us.imdb.com/Title?0118437)  [All Movie Guide](http://allmovie.com/cg/avg.dll?p=avg&sql=A242083) |       From the beginning, Ellenor signals her client, Senator Keith Ellison, that she cannot be trusted.        As is the case with too many episodes of *The Practice*, the lawyers engage in bad lawyering without suffering any personal adverse consequences. It's time to revoke their bar cards. | |  | | --- | | **Bad Practice - As Usual**  by Taunya Lovell Banks, University of Maryland  In this season's opener of *The Practice*, the Boston-based law firm headed by Robert "Bobby" G. Donnell (Dylan McDermott) continues to struggle with the ethics of law practice. Ethical breaches on episodes of *The Practice* provide law teachers with ample examples of bad or unethical lawyering. The season's first episode, entitled *The Candidate*, centers around Ellenor Frutt's (Camryn Manheim ) representation of a friend, a well regarded Senator, charged with murder. She also represents his wife and daughter, witnesses to the murder.  The ethical problems with representing multiple potential suspects, any one of whom might be responsible for the murder, are readily apparent to even the most naive viewer of lawyer shows. Rather than recite the litany of ethical breaches that occur in this episode, a record number even for *The Practice*, I want to focus on one particularly essential component of good lawyering, trust. A lawyer must have trust in the legal system, colleagues and clients. In turn, the lawyer must engender trust in colleagues and clients. In this episode Ellenor proves herself untrustworthy in every respect.  It is essential that a client trust her lawyer so that the client will be forthcoming with the lawyer. Trust is particularly important if the lawyer is to fulfill her role as counselor. The lawyer as counselor helps the client make crucial decisions over the life of the case. Without all the information a client has to offer, the lawyer-counselor cannot help her client make informed choices. The lawyer-advocate also is severely handicap in preparing a defense. Yet, from the beginning, Ellenor signals her client, Senator Keith Ellison, that she cannot be trusted.  After being summoned to the Senator's house and shown the murder scene, Ellenor tells the Senator not to say anything that will prevent her from representing him. Given this initial warning that she can not be trusted with the truth, why would the Senator be forthcoming with the truth? Unsurprisingly, the Senator responds, "if knowing the truth would prevent you from representing me, you're not getting it." He continues, saying that Ellenor must decide how much information she wants from him.  A good lawyer might reply that knowing the whole truth will help the lawyer to prepare an effective defense. Even a guilty person is entitled to demand that the prosecution prove its case. Ellenor appears to misconstrue the lawyer's obligation. A good defense lawyer would make the state prove its case beyond a reasonable doubt while preserving her client's constitutional right against self- incrimination. Instead, Ellenor tells the Senator to wash the blood spots off his naked body, serious misconduct on her part.  By encouraging the Senator to destroy evidence, Ellenor may have committed a felony, obstruction of justice. It is one thing for a lawyer to advise a client on how to avoid conviction, but quite another to give advice on how to avoid detection. This is not quite the same as the classic case of *In Re Ryder* where the lawyer took possession of the weapon, but close enough.  Despite their friendship, there is no lawyer-client trust between Ellenor and Senator Ellison because Ellenor does not want to know the truth. She also is unwilling to tell her partners the truth. She lies to Bobby saying that the Senator came up with the idea of washing off the blood spots. Bobby strongly suspects that Ellenor is lying to him about her commission of not only an ethical breach, but a criminal offense. Bobby, no paragon of ethical virtue, is really concerned that Ellenor may have broken the law, not the canons of ethics. Despite these limitations, the entire firm takes on the case.  Ellenor and her partners end up lawyering in the dark, a problem that plagues their defense of Senator Ellison throughout the show. Worried about his political career, the Senator consistently refuses to tell his lawyers what happens and actually misleads them. The witness clients, the wife and daughter, also lie to the firm lawyers. Not knowing the truth leads to the surprise ending. Perhaps this is dramatic license, but it conveys a potentially dangerous message to the viewing audience - truth is not a necessary corollary to justice. Further, as is the case with too many episodes of *The Practice*, the lawyers engage in bad lawyering without suffering any personal adverse consequences. It's time to revoke their bar cards.  Posted October 18, 2001 |   **Would you like to comment on this article? 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