Preface

It happened in the late spring of 1995, on Chicago's predominantly white southwest side. A tough cop, appropriately nicknamed “Bulldog,” came up to an African-American grammar school student, shoved him around while spewing a string of racial slurs, and warned the youngster to stay in his own neighborhood. The boy’s white friends and teachers tried to intervene, but there was nothing they could to do restrain Bulldog. Perhaps worse, Bulldog’s partner — also a white male cop — stood by watching, as though roughing up a black kid was just a routine part of life in the big city.

Fortunately, the student’s teachers did not see it that way. They contacted the press, and Bulldog’s bullying eventually made headlines — leading to widespread public outrage and calls for the officer to be fired or even prosecuted. No one supports rogue cops, at least not after they’ve made the evening news, and Bulldog was soon charged with violating the student’s civil rights, for which he was placed on federal court supervision (although he was allowed to remain on the police force). That seemed to be a relatively happy ending, and the television and print reporters predictably went on to cover other stories.

It struck me at the time, however, that the problem was much broader than a single confrontation between one hateful officer and one innocent kid. The entire judicial system is put at risk by racist cops because they destroy any sense of trust between minority communities and the police, and that can lead to a breakdown in law enforcement that potentially affects everyone. None of the news coverage had picked up that angle — too abstract, too impersonal, too unemotional — and so I wrote and submitted my first op-ed essay for the Chicago Tribune.

Maybe you think that you won’t ever run afoul of Bulldog or that you won’t ever need to trust him. Maybe you think that you can live securely in your suburb or high rise, and that Bulldog’s boorish conduct can be relegated to the realm of distasteful, but ultimately irrelevant, events.
But that would be wrong. Anyone can be the victim of a crime. Anyone can need the help of the police. Anyone might have to rely on a police officer’s veracity, integrity or honor. But when the police are dishonored, as Bulldog and too many others like him have dishonored the Chicago force, that trust just vanishes. And in the absence of trust, the police cannot really protect anyone. Fewer crimes will be reported. Fewer citizens will come to the aid of the police. Fewer witnesses will come forward. Indeed, fewer juries will be satisfied with police evidence and fewer criminals will go to jail.

Never having written for a newspaper before, I was unprepared for the response. I got dozens of phone calls and letters (no e-mail yet in those days) thanking me for writing the column. Invariably, callers would say that they hadn’t thought about the broader context of the problem or its implications for law enforcement. Many people — especially non-lawyers — encouraged me to continue writing about law, especially if I could explain the murkier or less obvious details of the judicial system.

Soon enough, I found myself writing fairly regularly for the Tribune, as well as for Newsday, the San Francisco Chronicle, and several other major newspapers. I recorded a dozen or so commentaries for National Public Radio. One of my columns was quoted by Senator Tom Harkin, though without crediting me, in the only evidentiary objection during the entire Clinton impeachment trial (Chief Justice Rehnquist sustained the objection, which might have made me famous if only Harkin had mentioned my name). And it turned out that lawyers, too, are interested in non-technical writing about law. In 2003 I was recruited to write the “Dicta” column for The American Lawyer, the idea being — as my then-editor put it — to bring some “Midwestern perspectives” to the magazine.

If there has been one overriding theme in my writing, it is the centrality of honesty (broadly construed) to the integrity of the legal system (also broadly construed). Often, of course, the issues are obvious. Lying witnesses and duplicitous lawyers are dishonest by any standard, and therefore deadly to the administration of justice. On the other hand, the “honesty” question is frequently more subtle. It is easy to see, for example, that Bulldog was a racist and a thug, but he was also a fraud — promising to “serve and protect,” when he actually used his badge to smack down anyone who seemed smaller or weaker. And as I tried to point out in that long-ago oped, his hypocrisy was ultimately more dangerous than his brutality.
The essays in this book explore the interplay between honesty and candor — or their absence — and the various participants in the legal professions. Sometimes the relationship is direct (as in the case of Oscar Wilde’s perjury in his notorious 1896 libel trial), and sometimes it is much more indirect (as in Justice Antonin Scalia’s refusal to disqualify himself in the famous 2004 duck hunt case), but I trust that readers will recognize that, even though there is no single definition of honesty, we may fail to achieve it in nearly infinite ways.