

## YOUNG LAWYERS

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# CIVILITY IN THE PRACTICE — DID WE SIGN UP FOR DEBATE OR AN ALLEY FIGHT?

I recall a conversation that I had with one of my law professors where he referred to the practice of law as “the noblest profession.” I have reflected on that characterization many times across my career. I reflect on it when I have been in the presence of great lawyers, who masterfully create arguments which make me proud of my chosen profession; and I reflect on it when I see jarring instances where attorneys are woefully unprepared and incompetent, making our profession look cheap and the butt of jokes. United States Chief Justice Warren E. Burger stated that “[o]urs is a sick profession marked by incompetence, lack of training, misconduct and bad manners. Ineptness, bungling, malpractice and bad ethics can be observed in court houses all over this country every day . . . these incompetents have a seeming unawareness of the fundamental

ethics of the profession.” If you’ve spent any time in a courtroom, you have likely already witnessed lawyers that run the gamut spanning all ages and practice areas and with varying levels of experience; and if you have not yet, you will.

However, the time that I reflect on it the most is as I observe the civility and decency, and sometimes lack thereof, between attorneys and toward the bench. It is no secret that we have chosen a profession that is adversarial by nature; but remember that we have chosen this *profession*, and that “[t]he law is the difference between a debate and an alley fight.”<sup>1</sup> Discourse will be present every single day of your career; if that premise were not true, we would all be out of jobs. However, the true glory lies in how you handle yourself before, during and after the battle. When arguing and bickering ensue, and calmer heads do not

prevail, then the actual issue at bar becomes lost. When articulating an intelligent and reasoned argument deteriorates to the level of a backyard brawl littered with pettiness, an offense has been committed that can mark an attorney across his or her career.

The preamble of the West Virginia Rules of Professional Responsibility states, “[i]n the nature of law practice, however, conflicting responsibilities are encountered. Many ethical problems arise from conflict between a lawyer’s responsibilities to clients, to the legal system and to the lawyer’s own interest in remaining an ethical person while earning a satisfactory living. The Rules of Professional Conduct often prescribe terms for resolving such conflicts. Within the framework of these Rules, however, many difficult issues of professional discretion can arise. Such

issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the Rules. *These principles include the lawyer's obligation zealously to protect and pursue a client's legitimate interests, within the bounds of the law, while maintaining a professional, courteous and civil attitude toward all persons involved in the legal system.*<sup>2</sup> Therefore, personal digs and name calling, petty games and tricks and yelling and screaming have no place in our legal arena. Disliking or being underwhelmed by a fellow member of the bar does not give us permission to treat that individual poorly.

Across our lives, “[w]e learned about dignity and decency — that how hard you work matters more than how much you make ... that helping others means more than just getting ahead yourself. We learned about honesty and integrity — that the truth matters ... that you don’t take shortcuts or play by your own set of rules ... and success doesn’t count unless you earn it fair and square. We learned about gratitude and humility — that so many people had a hand in our success, from the teachers who inspired us to the janitors who kept our school clean ... and we were taught to value everyone’s contribution and treat everyone with respect.”<sup>3</sup> Charles Houston, former dean of Howard University, wisely stated that “[a] lawyer [is] either a social engineer or he’s a parasite on society.” How we treat each other as we work through our cases and represent our respective clients dictates how the public characterizes our chosen profession. We may believe we are social engineers; but what if, through our poor or negative treatment of our fellow members of the bar, we may be actually presenting to the public that we are a profession of bullies and parasites? Perception is everything, which merits our being cognizant of how our behavior toward one another may be further poisoning the public’s view of our profession.

Arm yourself for battle utilizing the facts and the law. Fill your quiver with carefully and artfully crafted

arguments. Know the rules of engagement, and play like a professional. Be the iron fist in the satin glove. Win or lose, understand that personal attacks and smarminess may feel cute or funny in the heat of the moment but seldom win your case or brownie points with your trier of fact. While sitting in on the YLS Bridge the Gap CLE presentation by Federal Magistrate Judges Michael Aloï and Omar Aboulhosn, discussing civility, they agreed with my perspective; the smart, cute or seemingly funny jabs that we throw at each other in emails, text messages and social media postings that later become exhibits in court pleadings are not viewed in that same light by the judges who ultimately read them. Always treat each other with dignity and civility; it is what is expected of every member of the bar, and the fact that we can passionately, yet civilly, disagree through debate rather than fighting in an alley is what makes law the noblest of professions.

In closing, and in the words of our former First Lady, “[t]his is a unique spotlight, and my goal has been to make sure I don’t waste it. That’s really been the thing. I mean, every day I wake up, it’s like, ‘Good Lord, please make sure I am being relevant, that I’m having an impact, that I’m making the difference, particularly in the lives of young people[,]’”<sup>4</sup> and, in my case, young lawyers. Thank you all for allowing me to represent you during my term on the Young Lawyers Executive Committee, and for the honor of serving and leading you as your YLS Chairperson for the past year. **WVL**

## Endnotes

1. Traver, Robert. *The Jealous Mistress* (1967) quoted in *The Little Black Book of Lawyer's Wisdom* edited by Tony Lyons. (2010).
2. WVRPC Preamble: A Lawyer's Responsibility. <http://www.courtswv.gov/legal-community/court-rules/professional-conduct/rule1.html#preamble> (last visited 1/14/2020) (emphasis added).
3. *Michelle Obama: Her Essential Wisdom* edited by Carol Kelly-Gangi, Democratic National Convention Address, Charlotte, NC. September 4, 2012. (2019).
4. *Id.* South by Southwest Music Festival, Austin, TX. March 16, 2016.