Public: Recent News

The North Carolina Lawyer Professional Creed

Article Date: 5/1/2008

The Lawyer's Creed

As guardians of the American legal system, lawyers have a special responsibility to honor the rule of law and advance justice, to provide excellent service to their clients, to respect opposing parties and their counsel, and to serve the public and the profession. In recognition of these responsibilities, North Carolina lawyers subscribe to the following professional creed:

First and foremost, I will strive to do honor to the search for justice.

To the courts, and other tribunals, and to those who assist them, I offer respect, truthfulness, courtesy, and punctuality.

To my clients, I offer competence, faithfulness, diligence, courtesy, and good judgment. I will strive to represent them as I would want to be represented and to be worthy of their trust.

To opposing parties and their counsel, I offer fairness, integrity, courtesy, and civility. I will seek reconciliation and, if unsuccessful, will strive to make our dispute a dignified one.

To the public and our systems of justice, I offer service. I will strive to improve my professional skills, the law, and our legal system, to make the law and our legal system accessible to all, and to represent those in need of legal service without regard to the popularity of the cause.

To the profession, I offer my dedication to its highest goals and my diligence in seeking to achieve those goals. I will strive to keep our profession a high calling in the spirit of pro bono and public service, and to conduct myself at all times in a manner that will reflect honor upon the profession.

To the individual members of the profession, I offer my services in mentorship when requested and when consistent with the ethical representation of my clients.

The Principles of Professional Courtesy

In 1989, the North Carolina Bar Association's Bench, Bar, and Law School Liaison Committee – which is composed of judges, law school deans, and leading lawyers – responded to the perceived decline of professionalism in the Bar by identifying aspirational standards of professional conduct. The Committee emphasized that the standards were not meant to be minimum or mandatory, but instead to be the standards related to our profession as a higher calling.

The Committee's standards were later adopted by the Association's Board of Governors.

Now, more than a decade later, the Association has decided it is time for North Carolina lawyers to re-commit themselves to these Principles and to dedicate themselves anew to the legal profession as a higher calling.

The Preamble

The degree of respect which the general public holds for the legal profession is enhanced when the members of the profession demonstrate respect for one another. Civility and manners, no less than a deep-rooted, broad respect for the law, are the hallmarks of an enlightened and effective system of justice. Thoughtful, courteous conduct, manners, and attitudes, constantly practiced by the Bench and Bar alike, will improve both the reality and the public perception of our legal system.

It is hoped that these Principles will serve as a continuing reminder to both Bench and Bar that the successful, indeed the enjoyable, practice of law requires something more than professional competence and that new and seasoned lawyers alike will practice patience, courtesy, and civility at all levels and stages of their calling.

Courtesy Toward the Court

A lawyer should speak or write courteously and respectfully in all communications with the Court.

A lawyer who has a personal or social relationship with a judge should never intimate that such relationship will have any bearing or influence on matters then pending or likely to be brought before that judge.

A lawyer should never suggest that a client contact the court concerning a case that is or is likely to be before the court, and conversely should, if the likelihood of such conduct is suspected, forcefully discourage it.

A lawyer should promptly notify the court, as well as all counsel and witnesses, of any delays, continuances, or cancellations of proceedings.

A lawyer appearing in a public proceeding should be attired in a manner that connotes respect for the court.

A lawyer should stand when addressing the court.

A lawyer should avoid visual or verbal displays of temper toward the court, and especially upon a bench ruling against him.

Courtesy Toward Clients

A lawyer should maintain a cordial and respectful relationship with clients and be courteously candid, even when there is a disagreement with the client as to the manner in which the client's case should proceed.

Courtesy Toward Other Counsel

A lawyer should maintain a cordial and respectful relationship with other lawyers and should always be courteous and candid with opposing counsel, reserving the right to disagree without being disagreeable.

Before scheduling depositions, hearings, or motions, a lawyer should endeavor to contact opposing counsel and agree on a convenient time, date, and place so as to reasonably accommodate all counsel. When it becomes necessary to cancel scheduled hearings or depositions, opposing counsel should be notified promptly.

If a lawyer knows that his client is going to submit to a voluntary dismissal of a matter, the lawyer should promptly notify opposing counsel to avoid unnecessary trial preparation and expense.

A lawyer should refrain from curt or personally critical remarks concerning opposing counsel.

A lawyer should return other counsel's telephone calls and respond to written communications in a timely manner.

A lawyer in the courtroom should do the following whenever reasonably possible:

• avoid interruption of opposing counsel except when necessary to voice an objection.
• unless otherwise directed by the court, present an exhibit to opposing counsel before presenting the exhibit to a witness.
• avoid standing between the witness and opposing counsel during examination.
• provide opposing counsel with a copy of any opinion or document given to the court.
• encourage appropriate courtroom behavior by clients and witnesses.

Courtesy Toward Other Personnel

A lawyer should act respectfully and speak cordially to all court personnel with an awareness that they are an integral part of the judicial system.

A lawyer should, whenever possible, be mindful of the constraints of time when filing papers, recording documents and initiating probate proceedings, and attempt to schedule in advance if extended time is anticipated.

Courtesy By the Court Toward Lawyers

Judges should accommodate reasonable personal requests by lawyers.

A judge should treat lawyers and litigants with courtesy, and, while maintaining control of proceedings, should attempt to do so in a manner intended to avoid personal humiliation.

Judges should conduct themselves in social settings in a way that recognizes attempts to avoid the perceptions of favoritism that may arise when they are seen with an attorney or party in pending litigation.

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NCBA Professionalism Committee, 2003

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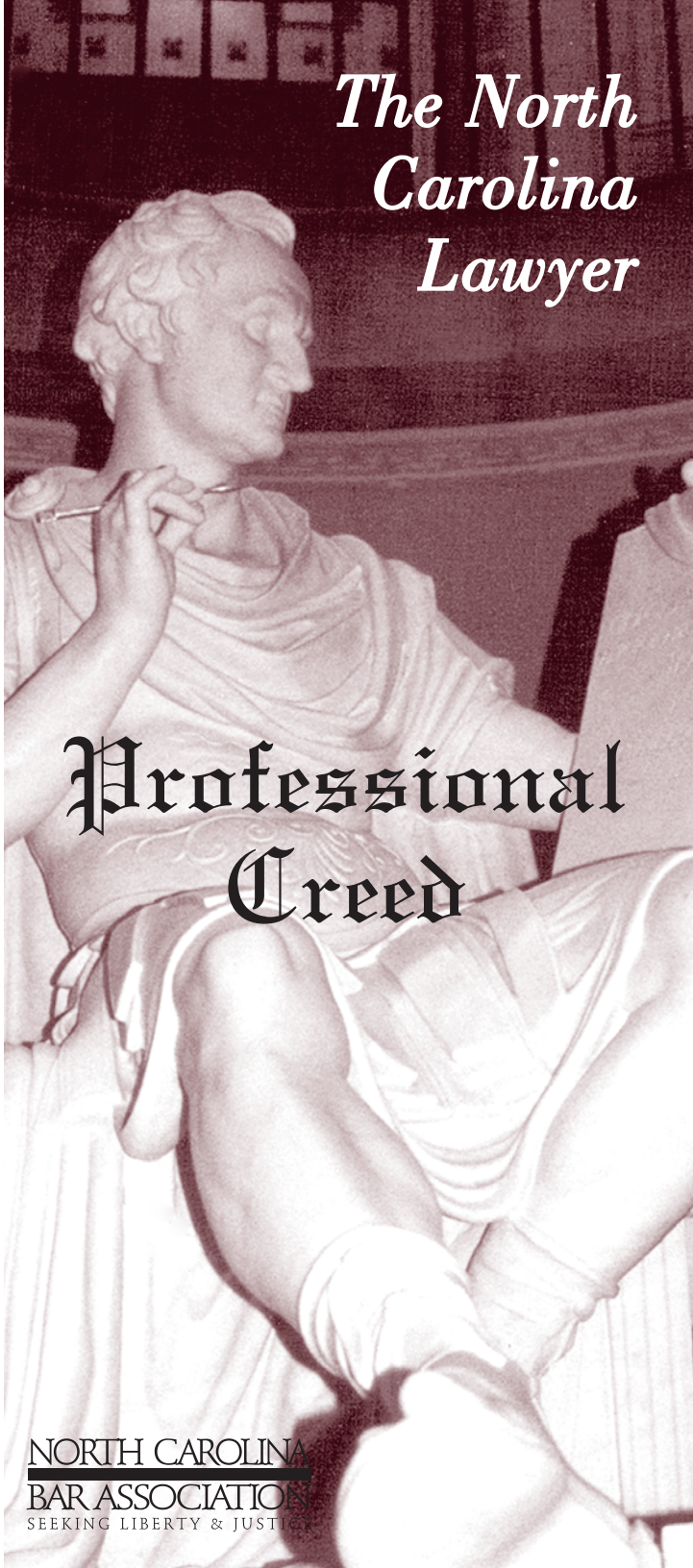

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Professional Creed

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Lawyer to Lawyer:

North Carolina Reflections on the Practice of Law

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Published by
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and edited by Theresa A. Newman, committee member 1997-2003.

NORTH CAROLINA
BAR ASSOCIATION
SEEKING LIBERTY & JUSTICE

In memory of the Honorable H. Brent McKnight

(February 20, 1952 – November 27, 2004)

Judge, United States District Court, Western District of North Carolina

"To be a lawyer, attorney, or counselor called to serve the cause of justice in a society founded on the notion that every individual has inalienable rights, and the government exists not to take away those rights but to vindicate them, is a noble calling indeed. A calling both inspirational and aspirational. Justice grounded in Truth is our lodestar, what we set our sights on, what gives our judicial institutions their purpose. And without lawyers so committed, they could not function."

– Judge McKnight,

addressing members of the bench and bar in Charlotte, N.C., November 18, 2004

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Supreme Court
State of North Carolina
Raleigh

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CHIEF JUSTICE SARAH PARKER

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On behalf of the Supreme Court of North Carolina, I am pleased to welcome you to the Bar by presenting you with this complimentary copy of *Lawyer to Lawyer: North Carolina Reflections on the Practice of Law*.

Originally published in 2004 by the Professionalism Committee of the North Carolina Bar Association, *Lawyer to Lawyer* is a collection of twenty-two professionalism essays written by an esteemed assemblage of North Carolina lawyers. While of value to all members of the legal profession, the message contained within these pages may prove especially beneficial to newly licensed lawyers entering the practice of law in North Carolina.

Now in its second printing, publication of *Lawyer to Lawyer* has again been underwritten through matching gifts provided by the Chief Justice's Commission on Professionalism and the North Carolina Bar Association Foundation Endowment. Complimentary copies are being provided to all newly licensed North Carolina lawyers.

I encourage you to review these essays and refer to the timeless message therein throughout your career. In so doing, you will be reminded that the law is indeed a noble profession and will be proud to be a lawyer.

Congratulations and all good wishes for a successful and satisfying journey in the legal profession.

Sincerely yours,

Sarah Parker

Sarah Parker
Chief Justice
Supreme Court of North Carolina

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Foreword: Thrasymachus at the Coffeeshop

H. Brent McKnight

Some years ago I guest lectured in a West Point political philosophy class. I took as one of my texts a debate between Socrates and Thrasymachus on the nature of justice. Thrasymachus declares that "the just is nothing else than the advantage of the stronger."* At the conclusion of my remarks, and despite my impassioned arguments to the contrary, a cadet declared that he agreed with Thrasymachus. Justice as a concept and a system, he asserted, is merely the exercise of power on behalf of those who hold its reins. I pondered this for a moment. How contrary to my deepest convictions and those of most attorneys with whom I have the privilege to work! I responded simply that he would do well to take this debate and apply it to his sense of calling as a soldier: "What are your purposes; whom and what do you serve?"

When I encounter Thrasymachus' acolytes in academia, the media, and the legal profession – and he has a substantial following – I cling to the ideals of the legal profession: pursuit of justice for the weak as well as the strong, affirmation of freedom, the presumption of innocence, individual worth, equal opportunity. Call me naive, but I am not alone.

The essays in this book prove the point. Too often we are told that law is a form of business; that in the practice of law winning trumps civility, integrity, even honesty; that the aim of law practice is nothing else than the advantage of the stronger. To the contrary: Law can and ought to be practiced with integrity and civility, with justice as its lodestar. The writers of these essays share this conviction, and what's more, they live it.

These essays perpetuate a tradition of North Carolina law practice. Many North Carolina lawyers reflect fondly on the days when members of the Bar had more time to spend talking about what it means to be a lawyer. From the coffeeshop to the courthouse, lawyers swapped stories about their practices. Defense counsel told about comforting a client late into the night while the jury was deciding his fate. Prosecutors described how they decided to reject a guilty plea they knew to be false. Business lawyers recounted how they convinced a client to end a questionable bookkeeping practice or to turn over a damaging document. Lawyers in all practice areas detailed the pro bono work they did for local nonprofit organizations, children in need of legal guardians, low income residents, or any number of other groups or causes. They also told how they kept their cool and met the demands of the profession even when they were extremely busy or tired, or when they met a particularly formidable or unprofessional adversary across the

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The author is a United States District Court Judge in the Western District of North Carolina.

courtroom or the conference table. And they often talked about their great pride in their chosen profession and their fervent wish to preserve its integrity.

These accounts certainly entertained the listeners, but they also served to mentor the younger lawyers. The NCBA Professionalism Committee offers these essays from lawyers in all corners of the State and all aspects of the Bar, ranging from country lawyers who quietly serve their clients to Bar leaders with high-powered practices, and from young lawyers only a few years out of law school to those with fifty or more years of practice. Were lawyers still gathering to talk in coffeeshops and courthouses, stories such as these would be told, their wisdom and encouragement shared.

The venue may have changed; the professional ideals have not. Perhaps we don't meet in coffeeshops as much as we did or as much as we would like, but we face the same opportunities to raise the standard for professionalism. In these stories, we see that the ideals can be lived to the betterment of our profession and the encouragement of us all. All it takes is resolve and a measure of courage. To those who contributed to this volume, who carry on the great tradition of professionalism in the North Carolina Bar, we offer our sincere thanks for your idealism, courage, and inspiration.

* *Plato, Republic, Book 1, 338c.*

"More civility and greater professionalism can only enhance the pleasure lawyers find in practice, increase the effectiveness of our system of justice, and improve the public's perception of lawyers."

United States Supreme Court Justice
Sandra Day O'Connor

The Simple and Honest Practice of Law

Debra Bechtel

Whether you are a new lawyer or a seasoned veteran, issues can arise that give you pause or cause you to question your competence in a particular area. Sometimes you can work around the issues because they arise before you begin to tackle a problem. Unfortunately, at other times, the issues arise only later, and, then, it is only hindsight that allows you to benefit from what they taught you. I learned this lesson early on in my legal career.

When I graduated from law school, I wanted to gain trial practice quickly and therefore turned to the District Attorney's Office. Because I was fresh out of law school, I was assigned to District Court. At the beginning I thought I would never be able to handle a docket with 250 or more cases, but my DA thought differently. After allowing me to shadow another ADA for just a few days, he sent me out on my own. As I gained my footing, the judges, police officers, clerks, and even some of the defense attorneys were patient and kind. After a few months, I felt right at home and like a real professional and competent lawyer.

Before the year was out, the DA thought it was time for me to join the "grown-up" lawyers and sent me off to Superior Court. My first trial was a DWI in front of a visiting judge, the Honorable Lacy Thornburg, the former attorney general and now a federal judge. Although my colleague was trying to convince me how lucky I was to have someone of such prominence presiding over my first jury trial, the look on my colleague's face and the queasiness in my stomach led me to believe I was in trouble. I was already nervous about being in front of a jury for the first time and arguing against a lawyer widely known for his many defense verdicts. My main witness was also a state trooper testifying in his first jury trial. It seemed things could not get worse.

Somehow I survived my opening argument – and no one laughed. I presented my evidence and endured having everything I said objected to, even my own name! Judge Thornburg did not seem to notice or simply did not let me realize that he saw my hands shaking and my knees knocking. I know he could not see my stomach turning. After making it through the presentation of evidence and the defendant's motion to dismiss, I presented my closing argument. I did not speak long. The case seemed straightforward to me, and I presented it that way to the jury. The defense attorney took a different approach. He brought into his closing argument everything from the American flag to being able to enjoy a cocktail at a daughter's wedding – none of

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The author is County Attorney for Catawba County (Newton).

which was relevant to the case.

After Judge Thornburg gave the instructions to the jury and they left to deliberate, the senior ADA, who had been at the trial to give me moral support, told me I had done a good job but warned me that the defense lawyer was really good. He said something like "Don't let it get to you if you don't win." In less than five minutes after the door closed on the jury deliberation room, we heard a knock – the jury had reached a verdict. The senior ADA patted me on the back and told me not to let it get me down. He said, "There will be other opportunities."

The defense lawyer smiled, and I immediately began to wonder what I had done wrong. Could the jury tell I was new and therefore discredited all the evidence? Did I forget to address a required element of the offense? Did I say something to offend the jury during my opening or closing argument? Should I have talked about more in my closing argument, as the defense lawyer did? As these questions and others raced through my head, the senior ADA told me how to behave when the verdict was read: "Just sit there and accept what the jury declares. You can get upset later behind closed doors." As the jury marched in and sat down, I tried in vain to read their faces to see if I could tell what they were thinking.

After the bailiff handed Judge Thornburg the verdict, the Judge kept a perfect poker face while he silently read it and handed it back to the bailiff, who in turn handed it back to the jury foreman. Although all of this took only a few minutes, it felt like hours dragged by. The foreman stood and read the verdict: "We the jury, by a unanimous verdict" – the tension was unbearable – "find the defendant Guilty." The room fell silent. No one had expected a conviction in that short a time. The defendant and his lawyer were stunned. For that matter, so were my colleague and I. I leaned over to him and asked, "Did he say guilty?" He nodded his head.

Although I cannot remember very clearly what followed next, I do remember the following: The jury was thanked before it left; the defendant was sentenced but not severely because it was his first offense; the defense lawyer would not shake my hand before he led his client out of the courtroom; the other ADA congratulated me, as did the clerk and the bailiff; and the person I was most intimidated by was the kindest – Judge Thornburg complimented me warmly, even though he must have noticed my nervousness throughout the trial.

Before my career led me in another direction, I tried thirty-five more jury cases as an ADA. I was fortunate that I lost only one trial. In large part, I think I owe my success to the lessons I learned at that first trial. Despite all the odds against me, I somehow managed to keep a calm exterior and present my case the best way I knew how – with honesty, integrity, and succinctness. Throughout the trial, I maintained my passion for what I believed to be the truth, and, most importantly, I spoke plainly and honestly to the jury.

That simple, honest style has served me well throughout my practice. I never lie to people. I don't embellish things. I don't try to be someone I'm not. I speak honestly and plainly. In short, I treat others as I like to be treated. Practicing law this way – and even living life this way – has had tremendous rewards, much like winning that first trial.

Practicing Law and Having Fun

Doris Bray

I love practicing law. Many of my lawyer friends do not. The reasons I enjoy being a lawyer are simple: I consider law a profession, not a business; I truly value my clients and place their needs first; I take great pride in delivering an excellent work product; and I derive tremendous satisfaction from helping my clients achieve their goals.

I have practiced law for more than thirty-five years, concentrating in the areas of corporate and business law. Early in my career, I was concerned about whether I could become a "rainmaker" at a time when few women practiced law and even fewer practiced in the business area. Over time, I hit upon the secret: If you do good work and make each client feel you will go the extra mile for him or her, clients will come. In short, I learned that lawyers, not marketing plans, attract clients.

Over the years, my clients have come to think of me as a member of their senior management teams. Although I have never run a business, my experience representing many businesses in a wide number of transactions is valued by clients facing similar situations for the first time. To them, my experience, loyalty, and willingness to go the extra mile to help them achieve their goals make me a valuable member of the team – and at times even a friend. I have learned that this relationship with your clients – especially in the business area, where clients often have interesting, entrepreneurial personalities – is what helps make lawyering great fun.

Unfortunately, during my years of practice, I have noticed a regrettable development in the legal profession. Today, many lawyers and law firms tend to consider the law a business only. To them, the bottom line, marketing plans, billable hours, and hourly rates take priority over the client. These lawyers look at clients solely as a source of income, and if the projected fee is not large enough to satisfy firm guidelines, the client is rejected. This is a great and regrettable shift from the law as a noble profession.

I still take seriously what I learned early in my legal career, even well before practicing law. When I was a first-year law student at the University of North Carolina, Dean Henry Brandis spoke to the typically idealistic entering class about the practice of law as a profession. He told us that although we could make a comfortable living practicing law, we should not expect to get rich. Rather, we should conduct ourselves as professionals pursuing an honorable profession.

So many lawyers today are taking a different measure of the profession – allowing the num-

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The author is a member of Schell Bray Aycock Abel and Livingston, PLLC-Greensboro.

ber of billable hours to serve as the major measure of a lawyer's worth. The resulting risk is that the pressure on a law firm's attorneys, especially the associates, to produce as many billable hours as possible leads to "churning files" and even fabricating the number of hours worked. I think that these pressures – and the consequent loss of all that which I find gratifying, valuable, and fun about the practice of law – are the principal reasons that many lawyers today hate practicing law.

Additionally, from a purely business perspective, lawyers should reject some of the recent business practices. For example, charging strictly on an hourly basis tends to reward inefficiency. The better billing approach – and the one I follow – is to charge a fair price for work well done. In my practice, if one of the attorneys who worked on a particular matter was inefficient or inexperienced, that is taken into consideration. Alternatively, if we did a spectacular job in helping our client negotiate the transaction, or if we gave a significant legal opinion, that, too, is taken into consideration. In both cases, fairness is the key – and fairness works. I cannot recall more than two or three complaints about my bills over the years. I know I could make more money if I billed more aggressively, but I choose not to do so.

I recently celebrated my sixty-fifth birthday, and the idea of retirement briefly flitted across my mind. I quickly dismissed the thought. I don't want to retire yet. I have too much fun and derive too much satisfaction from practicing law. I would miss my clients and miss the satisfaction of a job well done. I wish more lawyers shared my views about the practice of law, and I wish more lawyers were having fun.

Young attorneys should pause frequently to ask themselves the following questions: Am I having fun? Am I deriving satisfaction from my work? Do I like practicing law? If the answers are no, these lawyers should look closely at their situations and figure out how to make the answers yes. Recognizing that the practice of law is a noble profession – that our clients have real needs we can help them with and that pleasure can be derived from helping to meet those needs and from doing our jobs well – may lead them to where I am today: sixty-five years old and having fun practicing law.

Remember Who You Are

Jesse B. Caldwell III

Superior Court Judge Robert E. Gaines used to tell a story about leaving home to fight in the Korean War. His father put his arm on Robert's shoulders, looked him in the eye and said, "Son, you are going to encounter some experiences you never dreamed of. You will face things you never imagined. As you deal with these challenges, just remember who you are."

"Remember who you are." That was good advice to a young man leaving home. In fact, it is good advice for anyone, in any situation – even lawyers.

We lawyers need to remember we are members of an ancient and honorable profession. I fear too many of us have forgotten that. It is no secret that for many lawyers, the profession has lost much of its luster. We started out with such high aspirations, a genuine desire to serve. Somehow, many of us have lost our way.

Today, too many lawyers are burned out, overwhelmed, isolated, or frustrated. Many confess that if they had it to do over again, they would choose another profession. Still others would advise their children against becoming a lawyer.

Reasons for this dissatisfaction are many, including increased competition, a growing emphasis on the business aspects of the practice, and the way new technology has changed the way we practice. However, I submit that the principal underlying reason is that we have forgotten what it means to be a lawyer – we have forgotten "who we are." This has led to decreased collegiality, a failure to nurture new lawyers, and conduct that invites retaliation, retribution, and revenge.

In his jury arguments, Gaston County attorney Frank "Pat" Cooke often proclaimed that "there is a scarlet thread that runs throughout the fabric of our judicial system, throughout the fabric of society. This is the scarlet thread of fairness. If you pull that thread out, then the whole fabric of our system, and even society, becomes unraveled."

Pat Cooke understood that this scarlet thread is consistent with what the human heart longs for: basic fairness, equity, and justice. People want balanced scales and a level playing field. They become upset when they learn that someone is not playing fair and celebrate when good prevails over evil. This innate sense of justice explains the spontaneous applause at the end of a movie when the villain is vanquished. The applause is not orchestrated; the crowd is compelled to express its approval because the universal desire for justice has been collectively satisfied.

The author is Senior Resident Superior Court Judge, District 27-A, Gastonia.

Sadly, it is easy to lose sight of the scarlet thread when we become lost in a maze of stitches: depositions, faxes, telephone messages, mail, advance sheets, malpractice concerns, increasing overhead, changing laws, hardball tactics, and unreasonable judges. We have to fight to see past the stitches to remember why so many of us became lawyers: to fight unfairness, inequity, and injustice; to right the wrongs, balance the scales, and level the playing field; and to be the champion of the underdog, and the avenging angel for the oppressed.

Remembering who we are extends beyond the treatment of our clients. We must also treat our legal opponents – other lawyers and their clients – with respect and consideration. As Carl Spangenber reminds us, "We attempt to right wrongs done to our clients, but we must not do so by wronging the rights of our opponents. We erode the very inalienable rights of those we pretend to preserve when we act in anything less than with integrity."

Perhaps John Adams is one of the best examples of a lawyer who never lost sight of the scarlet thread. In 1770, he represented nine British soldiers charged with firing into a Boston mob and killing five people. Never before in the history of Massachusetts had a trial aroused such intense passion and prejudice. John Adams was already a leading patriot in Massachusetts. Practically every other patriot, including Samuel Adams and Paul Revere, was leading a public campaign in the press to lynch the soldiers. The case was so controversial that not even the Crown lawyers would represent the soldiers. Yet Adams had no hesitation. He said, "Counsel ought to be the very last thing the accused should lack in a free country." Adams was jeered, pelted with rocks, and publicly called a hypocrite, but he knew that as a member of the Bar, it was his charge to stitch the scarlet thread. Although John Adams went on to co-author the Declaration of Independence and serve as our second President, late in life he declared that "[d]efending the soldiers was the best piece of service I ever rendered my country."

While John Adams serves well to inspire our conduct, I have a more tangible reminder in my office. I keep a spool of crimson thread on my desk. When the phone is driving me crazy, a lawyer acts like a jerk, or my calendar is impossible, I look at that spool of thread to help me remember who I am.

The next time you are at a department store, purchase a spool of red thread. Keep it on your desk, or carry it in your briefcase or purse. It may help you maintain your focus and keep the vision – and help you remember who you are.

A Wing, a Prayer, and an Air Force Officer: Why I Became a Lawyer

Douglas Connor

After attending two years of college, I enlisted in the United States Air Force Aviation Cadets Program to earn my wings and commission. This was in the mid-1950s, before the Air Force Academy was operational. I was commissioned a Second Lieutenant, awarded my silver wings, and assigned to the Strategic Air Command (SAC), the arm of the Air Force that launched heavy duty bombers. I was an intercept navigator on a KC-97. Our assignment was to perform mid-air refueling with huge multi-engined nuclear weapons bearing bombers.

After being promoted to First Lieutenant, I was also assigned to be an instructor and "lead crew" intercept navigator. At about the same time, all SAC aircrews had to go on "strip alert" because of the developing Soviet Union intercontinental ballistic missile capacity. In short, we had to get several of our four-engine aircraft started, taxied out to the active runway, and off the ground in less than fifteen minutes.

This was a highly complex, coordinated, and dangerous procedure. Each member of a six-man aircrew had to perform his separate duty on the dead run and in a definite sequence. A disaster could result if even one member of the team allowed his procedure to get out of order. That disaster did occur on one sunny day in 1958.

An external power unit was used as part of our engine start procedure. The power unit was a large yellow box on wheels that was parked forward of the left wing. The KC-97s were propeller-driven aircraft, and the power unit was usually parked about fifteen feet in front of the left inboard engine. A heavy electrical cable was run from this big yellow box and plugged into the nose of the aircraft.

Electric power was then transmitted from the box into the plane and used to start the engines. The right inboard engine was always started first. The other three engines were then started in sequence. As the other three engines were being started, the boom operator would unplug the power cable from the front of the plane and drag the auxiliary power unit away from the front of the engines before the plane started to taxi out to the runway.

At the same time the boom operator was performing these duties, the radio operator was manning the fire extinguisher behind the left-side engines. Once the number one and two engines were started, the radio operator was supposed to pull the chocks from the front of the left landing gear and climb on board.

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On this occasion, the radio operator pulled the chocks out of sequence. The boom operator had not yet moved the auxiliary power unit when the plane started to taxi forward, and the propellers to the number one engine hit the box. The boom operator had to run for his life. The power unit, which was a gasoline powered generator, exploded in a huge ball of fire, engulfing the left wing and setting off the fuel tanks inserted in the wing. Both engines on that side were destroyed. Fortunately, no crewmember was injured.

Although it was never established exactly what had gone wrong, we do know the aircraft started to roll before the boom operator got the auxiliary power unit out of the way. Did the radio operator pull the chocks too soon? Did the boom operator fail to move the big yellow box? Should the navigator, who had a porthole overlooking the number one and two engines, have seen that the power unit had not been moved? Should the pilot sitting in the left front seat have seen the problem? What about the flight engineer who started the engines?

To answer these questions, another aircrew was appointed to investigate, and I was appointed to serve on the board. Each board member had to determine what, if anything, the aircrew member to whom he was assigned did or failed to do. I was assigned to investigate the navigator's role.

Unfortunately, the chairman of the investigating board was a Lt. Colonel who saw his role as protector of the operation established by the senior officers. To protect the operation, the Lt. Colonel had to prove that one, some, or all crewmembers erred – not that the operation, itself, was faulty. The rest of us on the board felt we had to protect the crew position we were representing; we did not want our crewmember to be the "scapegoat."

One board member – the Captain assigned to investigate the copilot's role – somehow managed to stay above this struggle, methodically and respectfully seeking the true answer. The Captain was the only lawyer on the board, and his legal training showed through.

As the investigation went off and on for several months and as the evidence was developed, I had the chance to observe how effectively the Captain performed his duties. He knew what questions to ask and how to ask them. He understood the impact documentary evidence would have on the board of senior officers who would ultimately review our work and make the final decisions. And, perhaps most importantly, he always acted professionally and ethically. He gained the respect of all members of our board, and he was able to develop evidence tending to show the operation itself had serious defects requiring modification. He was also very helpful, generously giving of his time to help the other board members conduct their investigations.

The senior officers overseeing the investigation soon began to rely on his input, and with his quiet competence – firmly rooted, in large part, in his legal training – the Captain led us to a fair and just result. The Lt. Colonel was unable to blame the accident on the aircrew, and, more importantly, all KC-97 air refuelers were modified to include onboard auxiliary power units. Never again would the boom operator have to stand out front and get the first engine started with power input from a big yellow box.

That young captain will never know what an influence he had on my life. As the result of that investigation and my experience on the investigating board, I knew I wanted to be a lawyer. A little more than one year later, my active duty was over, and I was working my way into law school. Most importantly, however, and because of that lawyer/captain, all KC-97 tankers were safer for the brave persons who flew them.

And Let Their Lives Do the Singing

Allyson K. Duncan

I have often told the story of growing up in the law school at North Carolina Central University, where my mother served as law librarian and taught legal research and writing for many years. The law, for me, seemed less a conscious career choice than a character trait encrypted into my genetic code. I never seriously considered anything else, except for a brief period when, at the age of approximately twelve, I read a book about great American fighter pilots of World War II and pined to be one of them. My mother, however, gently informed me that we were not at war. To her credit, she never intimated that being a fighter pilot was an inappropriate career choice for a girl.

Although my parents were remarkable in passing on their boundless sense of what diligence and persistence could achieve, the rest of the world imposed clearly defined limits. The talented students I watched at North Carolina Central University in my younger days could not be admitted to Duke (my law school alma mater), and they were not welcome in the Bar Association either.

Indeed, much of the change for the better stemmed from the efforts of committed attorneys, often undertaken at great professional and personal risk. Julius Chambers, a particular hero of mine, speaks of learning to leave his car's driver side door open when he turned the key in the ignition, so that if the vehicle contained a bomb, he might escape death by being blown out. That is a life lesson my generation did not have to learn because of pioneering lawyers like Mr. Chambers. How often is his story still told? Can we afford to forget the extent to which we owe our complacency to his courage?

It is tempting to think that the greatest battles confronting the profession and the public have been fought. I don't think that's true. The challenges and frontiers of the law have changed, but its imperatives have not. Fortunately, few of us will have to choose between our conviction and our personal safety. But attorneys will always be on the front lines of important issues and unpopular causes; the current debate over the rights of enemy non-combatants on and off American soil is a good example.

On the micro-level, I fear that the most daunting challenges to our profession stem from cynicism and a lack of respect for the law as a profession and for each other. The incivility that is often and legitimately deplored could occur only if we do not see the profession, as I did

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growing up and do now, as a calling.

I do not like lawyer-bashing. However, it does not concern me as much as it does some, in part because I suspect it is nothing new. With some happy exceptions, much of our work involves dealing with people who are in crisis; there is an inevitable "guilt by association." Charles Dickens reminds us that "[i]f there were no bad people, there would be no good lawyers."

I am more frustrated by lawyers who do not appear to recognize the worth of what we do, take pride in those who embody its highest principles, and use every opportunity that presents itself to spread the message of what they stand for. I don't understand how we can share a profession with Bill Friday, Ralph Stockton, Bill Womble, Rhoda Billings, Henry Frye, Don Cowan, James Ferguson, and others of their stature, and not be inspired by all that they contribute, and accord them the recognition they deserve. I would like to see these giants of the profession and the examples they provide made a part of any discussion of the law and lawyers, whether such discussions take place only among ourselves or before the public. There will always be those who find the lawyers who are bad; we can be equally vigilant in lauding the ones who are good.

The value of sharing reflections among members of the Bar is that it provides some substitute for the older lawyer to younger lawyer guidance that is increasingly less likely to occur. The drawback is that we may be preaching to the choir; those who are drawn to these reflections will be the ones least likely to need them. In addition to mentoring and trying to lead by example, we can pay attention to what we comment on and recognize. The lawyer who obtains a massive verdict for a client is to be admired, particularly because of the vindication of her client's interests. The lawyer who spends Saturday mornings working with Habitat for Humanity should be more so, both because of the selflessness of the act and the public good it serves. It is probably clear from this example for which achievement I am more likely to be recognized, so my value judgment may just be sour grapes. My point, however, is that we should never pass up an opportunity to applaud those who embody the noble aspects of what we do, not just the commercial ones. They accept the law as a business, but they also revere it as a calling.

When the Bar Association celebrated the fiftieth anniversary of the Supreme Court's decision in Brown v. Board of Education in the spring of 2004, it recognized the best of professionalism. Not only did we celebrate a jurisprudential landmark, we also honored the lawyers and judges whose courage has made it easy for us to forget there was a period of time when separate but equal was the law.

There are other landmarks and other heroes, demonstrating courage and conviction in large ways and small, whose stories need to be told. It's a small step. But attorneys who believe their goal is to win at any cost can be shown, at least by example, that the gain is short-lived. The honor and respect of the profession should be reserved, and lavished upon, those who embody its ideals.

Lawyer Family: Lessons Learned for the Practice of Law

Robinson O. Everett

Many lawyers ask themselves, "Why did I become a lawyer?" My question is more specific: "Am I a lawyer because I was the only child of two unique North Carolina lawyers, who were great role models?" The answer is undoubtedly yes.

My father, R. O. Everett, was a farm boy from Eastern North Carolina. He graduated from the University of North Carolina at Chapel Hill in 1903 and then became one of the first five students to study law under Dean Mordecai at Trinity College. He entered law practice in Durham in 1905, where he continued until he died at the office in 1971 at the age of 92.

My mother, Kathrine Robinson Everett, became an attorney at a time when female lawyers were a rarity in North Carolina and more generally in the United States. I have been told that when Mother received her law degree in 1920 – the same year she received the right to vote – she was only the fourth woman to join the North Carolina Bar. Like my father, she, too, must have loved the law because she did not retire until 1990, when she was 97 years old – perhaps the oldest practicing lawyer in the United States at that time.

As I learned later, my family is greatly indebted to the organized North Carolina Bar. My parents met at a meeting of the North Carolina Bar Association in Pinehurst in 1924. The meeting was called to discuss an upcoming meeting of the American Bar Association that was going to take place in London. My parents' love blossomed when they happened to travel to the London meeting on the same ocean liner. So, in a way, I truly am a "Bar Association brat."

My parents participated extensively in Bar activities. I recall traveling with them to Washington, D.C., each May for the annual meetings of the American Law Institute, of which my father was an early member. I also remember making a bus trip to San Francisco with my mother in 1939 for an American Bar Association meeting. After becoming a lawyer myself in 1950, my parents and I usually attended the annual meetings of the American Law Institute and American Bar Association together.

After serving in the Korean War, I returned to Durham and started working with a group of lawyers, but I soon joined my parents' office, all working under the name Everett, Everett, and Everett. In 1954, to memorialize our common devotion to the law, the three of us were admitted to the Bar of the United States Supreme Court. I understand this was the first time a family admission of this sort occurred in the Court.

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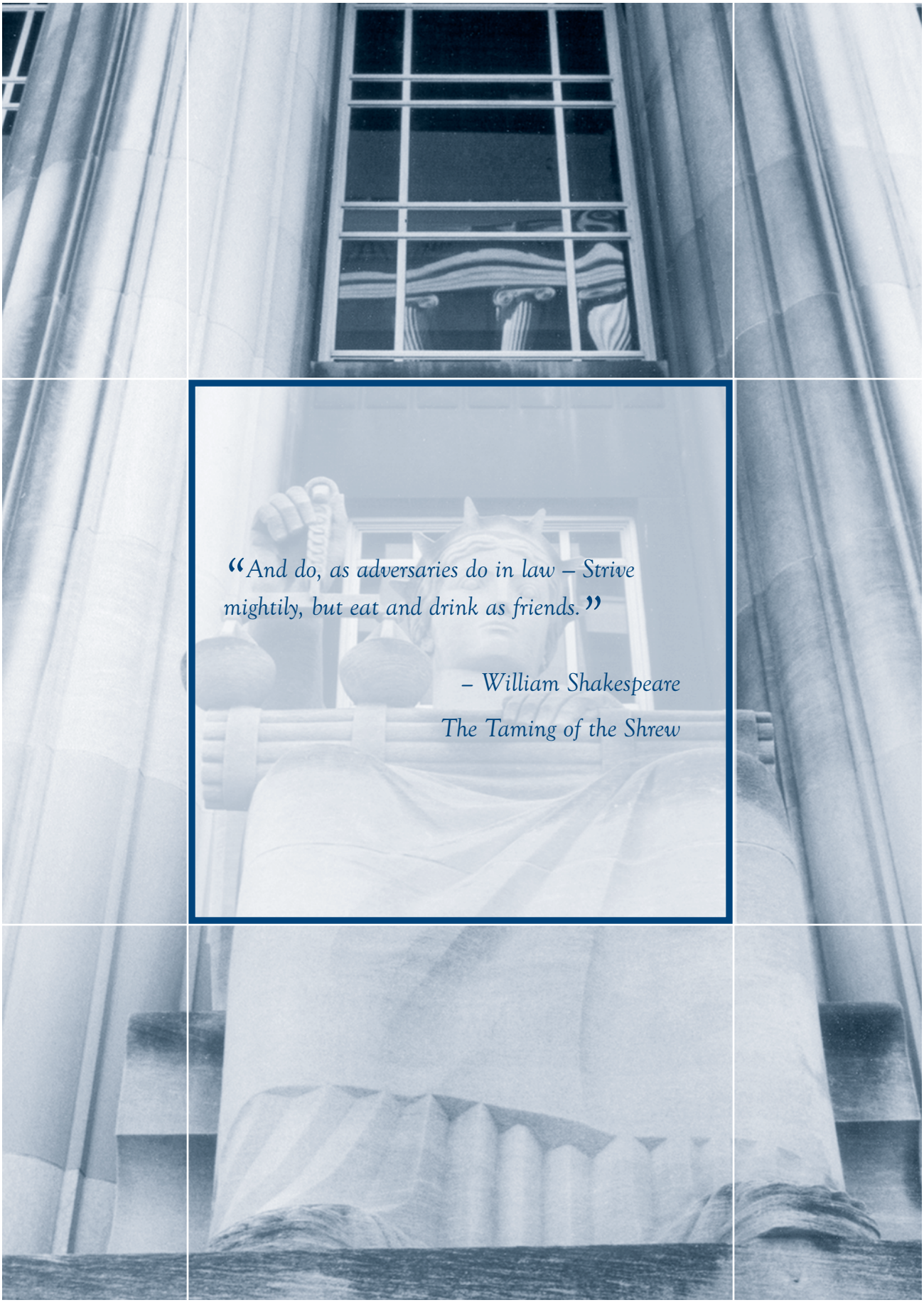
Like many lawyers of the time, my father felt a commitment to public service and served several terms in the North Carolina House of Representatives. In the General Assembly, he sponsored legislation creating the North Carolina State Bar in 1933. My mother was also dedicated to public service, and, in 1951, she began two decades of public service on the Durham City Council.

Although my parents never pushed me toward the practice of law, hearing them talk about some of their cases made me eager to know more. Conversations with my father also made me aware that he believed a law license carries with it a responsibility to help the underdog – even if doing so were unpopular and unprofitable. In the 1940s, he represented a young man being prosecuted in Durham for circulating the Communist-backed Stockholm peace petition. Even earlier than that he represented a Jewish man who was suing the City of Durham for his anti-Semitic treatment by a city employee. Then-Chief Justice Clark's opinion in that case, denouncing anti-Semitism, was a classic for its time. (I later learned that, by an amazing coincidence, the Jewish plaintiff's grandson was the roommate of Chief Justice Clark's grandson at Harvard Law School.)

Another lesson I learned from my father as he talked about his cases is that the clients' interests always come first. My father once represented a young African-American man charged with raping a white woman in a rural North Carolina County. My father's co-counsel was someone who had been retained by a prominent civil-rights organization. Although his co-counsel argued they should go to trial, my father argued that would result in the imposition of the death sentence and martyrdom for the client. My father instead argued the need to place the client's interests first and allow him to enter into a plea agreement.

Upon reflection, I realize I have been truly blessed. From childhood, I was trained by lawyers who were dedicated to the law and practiced it with skill. Each of them demonstrated the professionalism that gives law practice great meaning. Each of them took pleasure in attending Bar meetings, and participating in law reform efforts like those of the American Law Institute. Each believed in collegiality and in maintaining good relations with other lawyers. And each was committed to public service. To whatever extent my own career has been successful, I owe that to my lawyer family.



"And do, as adversaries do in law – Strive mightily, but eat and drink as friends."

– William Shakespeare

The Taming of the Shrew

Professionalism and Civility: Necessary Tools of Effective Advocacy

James E. Ferguson II

Many people say there is a problem in the legal profession today related to a decline in professionalism and civility. I suppose I should count myself lucky, since this is not a problem that I confront very often. However, I still accept that it is a problem because I hear about it and read about it. It is of grave concern to the public; it is of grave concern to my colleagues in the profession; and, because of those concerns, it is of grave concern to me.

The problem of a lack of professionalism and civility is not new. I have had to deal with it ever since I started practicing law thirty-seven years ago. I have learned over the years that the most effective way to combat unprofessionalism is to remain professional and civil in the face of the onslaught to the contrary. This is not only the right and moral thing to do; it will also win cases and serve your clients well.

In many ways the unprofessional and uncivil lawyer is like the school bully in grade school who gets instant gratification from throwing his weight around. The bully generates much fear, but no respect. No one admires and respects a bully. No one sympathizes and empathizes with the bully. No one likes to see one person take unfair advantage of others. The person who is likely to gain the respect of others is the person who treats others with decency and respect and who remains calm and confident when others try to rattle him or her.

Juries, judges, mediators, arbitrators, and other decision-makers respond similarly. They are much less likely to respond positively to a bully and a "Rambo" lawyer than they are to the lawyer who treats everyone with respect and decency; who knows the rules and can apply them in the skillful prosecution of his case; and who appears to be confident and in control – in short: the lawyer who behaves professionally.

Of course there are times in the practice of law – in court, in depositions, and in negotiations - where, quite legitimately, lawyers ought to respond with outrage because some outrageous conduct has occurred. But that outrage should not be an uncontrolled, unthinking response to the outrageous conduct of an opposing lawyer. Rather, it should be a controlled, carefully considered response. The key is to make a conscious and careful decision about how to respond, rather than letting your opponent control your response.

Lawyers can often rely on the rules of practice to help maintain control. For example, in the very few situations where I know I am going to have difficulty with opposing counsel, I video-

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tape the deposition. Sometimes, one little camera can be a greater restraining force than even a judge. If it is not, then you have an instant record you can use with the judge. Once you have done that a time or two, you are not going to have any more problems with that troublesome lawyer. Yet you have remained professional and civil throughout. You have not had an argument with the lawyer. You have not responded to his or her objectionable conduct with a personal insult. You have simply used the framework of the rules with which we work to benefit your client, yourself, and, hopefully, the profession as a whole.

The tools of professionalism and civility can also be used to relate to witnesses. When planning the examination of your witnesses, you can do more than simply outline the questions. You can also determine the tone you wish to set with each witness, and how you want to conduct yourself to convey to the witness, the judge, the jury, and all observers that you are in control; that you know what you are doing; and that you know what you want and how to get it. You can exercise control respectfully, without belittling or embarrassing anyone. If you succeed at this, you have advanced your case.

An old story nicely illustrates this point. A young prosecutor was trying an easy murder case with ten eyewitnesses, all of whom knew the defendant well and saw the defendant from close range stab the victim in the back. The defense was that he was not there. All of these eyewitnesses testified for the prosecution, but only one witness testified for the defense – the defendant's aging mother.

The young prosecutor knew that all she had to do was tear into the defendant's mother and prove she was lying. So when the mother took the stand, the young prosecutor growled, "Mrs. Jones, don't you know that there are ten eyewitnesses who know your son well, and they all testified before this court that it was your son who was standing over the victim with the murder weapon still clutched in his hand?" The mother meekly responded, "No, ma'am. That was not my son. He was home with me." The prosecutor shook her finger angrily, shouting, "You know you're not telling the truth. Your son was not with you; isn't that the truth?!" The mother even more meekly replied, "No, I am telling the truth. He was with me."

At closing, the young prosecutor said the defendant's old mother was the only witness the defense could come up with and then railed against her, pointing in her direction and shouting, "Did you see that old lady?! She's a bald-faced liar!"

Several jurors felt so sorry for the mother that they voted to acquit the defendant, hanging the jury,

When the case was retried sometime later, the prosecutor had learned from the first trial and approached the case differently. When the mother took the stand, the prosecutor asked her only a few very respectful questions:

"You are Mrs. Jones?"

"Yes, I am."

"You are the mother of the defendant in this case?"

"Yes, I am."

"And, of course, you love your son. Isn't that right?"

"Yes, I do."

That was the entire cross-examination.

On closing argument, the prosecutor simply said, "Ladies and gentlemen, you have seen the evidence. It speaks for itself. The defense brought in the only witness they could. The one you would expect. His mother." Then she sat down.

The jury went to the jury room to deliberate, and as soon as they were all seated they said, "Did you see that old lady?! She's a bald-faced liar!"

That is the power of professionalism and civility. I urge all lawyers to strive to conduct themselves in a manner to never demean the profession by meeting unprofessionalism and incivility with unprofessionalism and incivility. We all have a responsibility to remain professional and civil even in the face of the strongest provocation.

This essay is adapted from a North Carolina Bar Association and North Carolina Bar Foundation CLE on Professionalism and Civility, "Dealing in a Professional Way with Unprofessional Adversaries."

What the Practice of Law Really Is, Really

Jim R. Funderburk

So many of us, in beginning the practice of law, whether in firms, as sole practitioners, or even in government jobs, think we will find some case, statute, or obscure common law concept that will support our client's position and help us win the day. We all hope we can find the fine print that will unravel the large print and make us heroes in the eyes of our happy clients or employers. After all, winning our client's case is what we spent three long, hard years pulling down the books, spending tons of cash, and supporting coffee companies to achieve.

Sometimes, though, the purely legal solution may not serve our clients as well as a more practical solution. The real genius of good lawyering is to identify the true problem your client is facing, determine what your client really wants, and then try to achieve the best solution. The following contrasting examples will, I hope, better illustrate my point.

The Young Lawyer

The young lawyer, recently beginning the practice of law, has a new client who has been charged with speeding seventy-four miles per hour in a fifty-five mile-per-hour zone. The client's passenger was a retired police officer who says he will testify that, in his opinion, the client was not speeding. The young lawyer recognizes that it will be one police officer's word against another, which surely would produce reasonable doubt. He explains to the client that if the client loses at trial, he could lose his driver's license and his automobile insurance could increase greatly, but he also explains that they have a good chance of winning. The trial date is set, and, after three continuances because the state couldn't reach the case, the judge had to leave early, and the client's witness had the flu, the case is finally tried on the fourth date. The judge rules for the client, and the young lawyer is ecstatic. Meanwhile, the retired police officer has lost three days of work at his Krispy Kreme Donut job, the client has lost four days of work at the local furniture factory, and the client's wife has lost one-half day of work because she had to pick up the children after school while the client was in court.

The next client in to see the young lawyer is a father who demands custody of his children. He and the mother have separated, and the father, who is a long-haul truck driver, wants custody of his six- and eight-year-old children. The father insists he is just as good a parent as the mother and that his own mother can keep the children while he is driving his truck. He tells the young lawyer that he wants to hire someone who will fight for him. The young lawyer takes the

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case and files suit. Each side takes depositions, has home studies performed, attends seven court appearances, two meetings with a mediator, and a final custody battle lasting three days. The father testifies as to how bad the mother is, the mother testifies as to how bad the father is, and the children are asked to decide between the parents. The mother is awarded custody, but the father is awarded visitation with the children every other weekend and several hours of every day when he is not driving the truck long distance. The young lawyer is very pleased with his work because he obtained a great deal of time for his client with the children.

The third client in to see the young lawyer is a corporation executive. She says that her seventeen-year-old company repairs textile machinery and has eleven employees. She says the company works hard and has a good reputation, and that its largest client has become a deadbeat in the past two years, refusing to pay its bills. The executive is furious and wants to sue to show the client who is boss. The young lawyer reviews the documents and believes the company's client has no defense to non-payment. He files suit; the defendant company files a counterclaim; and the parties proceed with expensive discovery, hearings, and finally a trial. After a three-day trial, the jury returns a verdict for the full amount of the lawsuit filed by the young lawyer. Once again, our young lawyer is ecstatic because he not only has won a full judgment for his client, but he has also bested the defendant's high-priced corporate law firm.

The Experienced Lawyer

A generation later, the young lawyer has become experienced. He understands what real professionalism is in the practice of law. The son of the man he represented for speeding comes to his office one day visibly upset. He has just graduated from college, has recently married, and his wife is expecting their first child. He has been charged with speeding seventy-four in a fifty-five mile-per-hour zone but had a retired policeman riding with him who would testify that, in his opinion, the driver was not speeding. The lawyer talks to the young man about his job, his family, and his driving record. He learns that the young man has a good driving record but is struggling financially and needs every dollar he can make. Although the lawyer knows he can win the case in court, he talks to his client enough to know what he really wants: to avoid court, not lose time at work, and keep his automobile insurance from increasing. The experienced lawyer has the driver sign a waiver of his appearance in court and obtains some money for his trust account to pay any court costs and fine. The lawyer appears in court for the driver, has the charges reduced so there will be no increase in insurance and his client won't lose his license. The client is very happy with the results. He is also happy because he did not have to go to court or miss any time from work. The client's wife and his witness are also happy because they didn't have to go to court and lose money from work.

The next client in to see the experienced lawyer is the son of the truck driver who visited the lawyer a number of years before. The son is also a truck driver with two young children, and he, too, is facing divorce. He wants custody of the children and wants a lawsuit filed immediately. The experienced lawyer talks to the client a while and discovers that he is concerned he will somehow lose authority over his children and that his wife may, if she has custody, take the children out of state. The experienced lawyer does file suit, but first works out an agreement with

the wife's attorney. The parents will share joint custody, with the wife having primary custody; the father will have the children every other weekend and for several hours a day when he is home from his truck driving job. The parties further agree that neither party will remove the children on a permanent basis from the jurisdiction of the court without the court's prior written permission after due notice to the other party. The truck driver's problems have been solved to his satisfaction, the mother and father have remained friends, and the children have avoided a great deal of trauma.

The third client is a company executive from the textile repair business, which has changed to a plumbing supply store with twenty-five employees. The executive demands that a lawsuit be filed immediately against a "deadbeat plumbing company" that has owed more than $15,000 for the last six months. The executive wants a lawsuit filed immediately and wants to teach not only that company a lesson, but send out a clear message to other plumbing deadbeats that they had better pay their bills on time.

The experienced lawyer listens to the executive and lets her vent for a while. Through questioning, the lawyer learns that the plumbing company has been a good customer for eleven years and has paid its bills on time until recently. He learns that his client would agree to continue to do business with the plumbing company if the plumbing company would pay its bills. The lawyer remembered the last time he sued a debtor on behalf of this corporation – he obtained a judgment, but the debtor declared bankruptcy and the creditor received nothing. So, instead of filing suit immediately, the experienced lawyer called the plumbing company executive and asked if he and his client could treat him to lunch. The plumbing executive agreed, and they met for lunch. The plumbing executive explained that his company had fallen on hard times for various reasons, but they expected to be able to work themselves back slowly. The company was embarrassed because it owed so much money, but it simply could not pay the amount in full as the client demanded. The experienced lawyer worked out a method of payment with a fair interest rate to which both parties agreed. The client was very happy because the debt would be paid, with interest, and it retained the debtor as its best customer. The debtor was very happy because it had avoided a lawsuit, and because it felt like the creditor was being fair in giving it a chance to pay its just debts. They both thought the lawyer was brilliant.

The Moral

Because lawyers are trained to see both sides of a dispute, they are in a nearly unique position of being able to work toward solutions. From this vantage point, lawyers can often see that although problems are sometimes solved with purely legal solutions, many other times they are solved without resort to the courts. Clients are often so emotionally involved in a situation that a reasonable or rational solution escapes them. They just want the problem fixed and assume a lawyer should resort to a legal solution to fix it. Lawyers need to help them understand that a great deal of good lawyering might not even involve the legal system. That is, truly excellent lawyers solve problems – they do not simply search for the legal solution.

Write Your Story Every Day

Robert D. Lewis

> *Every tree is known by the fruit it bears; you do not pick figs from thorn bushes, or gather grapes from bramble bushes. A good man brings good out of the treasure of good things in his heart; a bad man brings bad out of his treasure of bad things. For a man's mouth speaks what his heart is full of.*
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> *Luke 6:44-45, Good News for Modern Man*

For a lawyer seeking guidance in honing and nurturing a consistently appropriate approach to his or her life's work, and in setting goals for and giving purpose to a career in this noble legal profession, the following admonitions by a minister, a quarterback, a Law Day participant, and an old lawyer would be good places to start.

The Minister: Isaac Simpson was bailiff in the Buncombe County Superior Court from January 1971 until his death in 1988. When presiding judges sought his opinion as to the character of a guilty defendant, the answer would be either "he's just a shirt tail kid" or "he ain't wurff a damn." At Ike's funeral, after commenting on the honorable way Ike lived his life, the minister reminded all in attendance "to write [their] story every day."

The Quarterback: In March 2003, the town of Black Mountain located in Western North Carolina had a day to honor former resident, Brad Johnson, quarterback for the 2003 champion Tampa Bay Buccaneers. In one of Johnson's appearances on that day, this one at an elementary school, he told the students that they should "make [their] mark."

The Law Day Participant: At a Law Day ceremony some years ago, one of the speakers suggested to the attendees, "You can be proud of the past, confident of the future, but you must produce in the present."

The Old Lawyer: On career day for high school seniors in my church, I joined several others in a classroom to listen to a veteran lawyer, George Pennell, tell us about his profession. He cautioned us that a lawyer must be on guard constantly to distinguish the ethical from the unethical, the legal from the not so legal, and the truth from a falsehood, *a fortiori*, right from wrong. And if we could not "stare down the devil" and reject tempting options certain to be

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faced by a practicing attorney, options that we either knew were wrong, or were not certain were right, then we should not join the Bar. He even gave us a litmus test to determine the answer: "If you have to ask yourself or others whether or not an action is proper, then don't do it."

While ethics in the marketplace is important, it is the *sine qua non* for lawyers. Almost every Bar journal contains the names of attorneys who have been censured or even disbarred for having violated fiduciary duties, particularly with funds entrusted to their care. Although the State Bar is vigilant in this area, even when formal action is not taken, a client's loss of trust in the lawyer is punishment in itself. For once trust is lost, it is never regained.

To earn a client's trust, we must give the client's legal problem careful attention, regardless of its nature or scope. Although the client's dilemma may not seem urgent to us, it is of paramount importance to the client. But we cannot let our clients control the conduct of the representation. We owe the court, opposing counsel, other third parties, and even ourselves the duty of utter honesty and fair dealing. Lawyers cannot hide behind the attorney/client relationship to relieve themselves of their duties as officers of the court. Lawyers must draw a "line in the sand" and be steadfast in their resolve to make no exceptions, regardless of pressures from many directions.

As certain as death and taxes, lawyers, prosecutors, and judges will be asked to approach, even cross the line. When that happens, George Pennell's litmus test would be instructive and determinative.

To be sure, trial lawyers must present their cases in the light most favorable to their clients, but they must still remember that they are officers of the court, and, as such, must never falsify the facts or knowingly misstate the prevailing law to the presiding judge in an argument. To seek to win regardless of cost is at least unprofessional if not unethical, and such an approach will inevitably lead an experienced jurist to conclude the following: He knows that is not the law; he knows I know it is not the law; and what's worse, he knows I know that he knows it is not the law.

Prosecutors and judges have an even higher duty. As an early Rule of Practice said, "the primary duty of a lawyer engaged in public prosecution is not to convict but to see that justice is done." And, with respect to judges, Benjamin Cardozo lectured in 1921 that

> [t]he judge, even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant, roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system and subordinated to "the primordial necessity of order in the social life." Wide enough in all conscience is the field of discretion that remains.

Certainly, writing your story every day, and making your mark in a law career – whether you are a trial attorney, a corporate lawyer, a prosecutor, or a judge – requires steadfast commitment to confidential management of your work without undue delay; finding the facts and applying the law; complying with the rules of practice; treating adverse parties and their representatives with courtesy and fair dealing; and being consistently devoted to ethical principles.

So, from time to time, as you continue with your practice of law, ask yourself what story you are writing as you strive to make your mark. And, as I do, think back to the wisdom gained from a minister, a quarterback, a law day participant, and an old lawyer.

What I Learned at the "Professor's" Knee

Edgar Love III

I first met William T. Covington in 1958 when I was interviewing for a job. His firm, Kennedy Covington Lobdell & Hickman, had offices in the old Law Building in Charlotte and, with nine lawyers, was the second largest in town. He was reared back in his swivel chair behind his oval desk, wearing a bow tie and a white button-down shirt with his shirtsleeves rolled up, his arms folded, and an unlit cigar in his hand. He was graying, scholarly, and had an easy laugh. On the bookshelves behind him were North Carolina General Statutes and Reporters, and on the bookshelves beside him were clothbound notebooks containing what I later learned were his abstracts of North Carolina cases, form books, and legal opinions furnished to clients. On his desk were a cup holding pencils, a letter opener, and a book open to a reported case, and beside the desk a dictating machine. On his wall were early scenes from the campuses of Davidson College, Princeton University, and the University of North Carolina at Chapel Hill, and certificates showing that he had been Editor-in-Chief of the Law Review at UNC, President of the Mecklenburg County Bar, and Commander in the U.S. Naval Reserve. He greeted me in great good humor, and everything I saw said: "This is what it's all about!"

Mr. Covington had begun practicing law in Charlotte before the Second World War, first with C. R. Gover, and then with his Carolina friend Hugh L. Lobdell. They merged with the Kennedy firm in 1957. He specialized in civil litigation and tried cases, wrote coverage opinions for insurance companies, and was the firm's premier appellate lawyer. Before he retired, he had been inducted into the American College of Trial Lawyers, and Kennedy Covington had over one hundred lawyers. He continued to provide advice and counsel until he died at ninety-four in 2001.

In 1959 I became Mr. Covington's associate, and he undertook to teach me how to think like a lawyer. Some associates in the firm called him "the Professor" because of his liberal use of his blue pencil. To me, he was always "Mr. Covington." I even discovered that I liked being edited and was exhilarated by an uncluttered opinion.

When he assigned a research question, he would frame the issue in a neutral way. He had a list of authorities to consult and the order in which they ought to be consulted. The issue would seem straightforward enough until I got into it. Then I would get entangled in worries about whether I had thought of all the alternatives or found the case closest in point or made sure that

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the case I relied on was its final disposition. He expected me to be firm in my position, so our discussions were a little like the Socratic method I had been introduced to in law school.

He was convinced that vague or ambiguous language was the result of lazy analysis and insisted on simple words that got directly to the point. No "moreovers" or "it might be argueds." Opinion letters began elegantly: "You have requested our opinion …" and proceeded to set out the specific question and the facts relied upon. He was not in the first instance interested in the "whys" of the argument or by what route I had arrived at my opinion. He thought the client was entitled to an answer (and he thought there was an answer rather than a range of possible answers), even if the issue had not been decided. If the issue had not been decided, then he got to why it should be decided in a certain way.

Mr. Covington could not take a position he did not believe in. I have never seen him so indignant as when a lawyer in another firm took contradictory positions on the same issue for two different clients on appeal on the theory that he was entitled to do so until the matter was settled. And he never thought in terms of constructs or symbols. In another context (he had an advanced degree in philosophy), he considered it dishonest to refer to heaven as being "up there."

Once he had the answer, he could argue honestly and convincingly and often prevail. And he was prepared to defend it all the way. We had to go to the North Carolina Supreme Court to get a reversal of a hearing commissioner's opinion that murder by a jealous husband of his wife, her paramour, and the proprietor at the grocery store where they worked arose "out of" their employment so as to be compensable under workmen's compensation. Even though two appellate courts thought that it was, Mr. Covington concluded that murder was not a risk of their employment. His former law school classmate Justice Susie Sharp wrote the opinion in the Supreme Court agreeing with him. (He did not appear in that case, so she was swayed not by his presence but by his logic.)

His cases were so carefully analyzed that he was able to settle most of them, but when they had to be tried, he was prepared for that, too. He wrote out his questions for direct and cross examination and thought a lot about his opening argument. And his final argument to the jury persuading them that he had proved his case was reasoned and short on histrionics, but long on logic. When he thought that the other side had not presented an essential element of its proof – e.g., a personal injury case in which a wheel came off a racing car and severed a spectator's arm and plaintiff's attorney had introduced no evidence of the custom in the racetrack business for dimensions of protective fences – he put on no evidence and got the last argument to the jury. Although he lost before the jury, he later obtained a reversal on appeal.

He could see down the road and anticipate all arguments that he might face and be ready for them. And he had such respect for lawyers and judges and the legal system that he would prepare as much as he thought he needed to, regardless of whether he could charge his client for all the time required. Long after the case had been decided, he was still looking for any answer that might have eluded him.

He warned us – we've all gotten burned! – about the dangers of serving as local counsel in big cases, because we might not have complete control over the way the case would be handled or the positions that the lawyers who engaged us might want to take.

What I learned is that, as UNC Professor Albert Coates told us, there is such a thing as "intellectual character." For William T. Covington, it came with the territory.

Beyond the Brass Ring: Becoming a Law Firm Partner

Kiran Mehta

After I graduated from law school twenty or so years ago, I did a one-year stint as a law clerk and then, like many, became an associate at a law firm. I was assigned to the firm's litigation team, and became a partner on January 1, 1988. I must confess, however, that I gave that transition very little thought at the time. It did not occur to me to reflect on what it meant to be a partner at any sort of law firm, let alone one as well established and prominent as the one I had joined.

In this respect, I suspect, I was not alone. Many associates at law firms focus so much on "making partner" that they tend not to give any thought to what it means beyond the outward manifestations of partnership status. To the associate, those outward manifestations were always pretty clear: equity participation; tenure; greater autonomy; opportunity to participate in policymaking; generally higher income; and internal and external recognition. In general, these goals are what most would-be partners perceive they will get, too. But this is only half of the picture.

A partnership is like a marriage. A person cannot "get, get, get" all the time, or the marriage will not survive – one has to give, too. As a young partner, particularly a young litigation partner, it is easy to give in the same manner one gave in order to achieve partnership. That is, it is easy to continue to work very hard, demonstrate superior technical skill and knowledge in an important area of a law firm's practice, and retain the confidence of more senior partners (both within and outside of the litigation department) for whom a young litigator works. But, in today's increasingly competitive environment, that cannot be all one is prepared to give, because to become a partner is to become a business "owner," with all that that entails.

As a business owner, being a great lawyer and delivering superior client service are merely baseline expectations. In addition to that, the owner must contribute in more intangible ways to the health and prosperity of the organization. At my firm – and, I suspect, many other law firms – the litigation department is divided into smaller groupings of practice-focused attorneys. For example, my firm has a financial services litigation practice group, a real estate, construction and land-use litigation practice group, a commercial litigation practice group, and so on. Each litigation partner must be an active member of at least one practice group, and that entails certain practice-focused responsibilities.

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The partner must contribute significant "investment time" (*i.e.*, non-billable time) to the group's activities and practice development plan. This of course may mean different things to different partners, depending upon their age, stage, and talents. For some, it may mean significant time writing articles or speaking at seminars. For others, it may mean significant leadership involvement in a trade association, bar association or community organization, or significant networking with prospective or existing clients. For others, it may mean mentoring or training associates. In practice, it is likely to mean some combination of several different areas of contribution.

The partner must develop and maintain specialized expertise in one or more of the practice group's service areas, so as to be on internal or external "short lists" and be in a position to attract, retain, and expand the group's legal work.

Finally, the partner must commit to cooperating with the group and supporting its decisions – regarding topics such as staffing, intake, or pricing – and to being accountable to the group and its goals, not just to individual goal achievement. Without this commitment, the group devolves into a collection of individuals, rather than a true team.

Note that all this activity is in addition to learning (and implementing, which is much more difficult) the routine business aspects of running a law firm – setting billing rates and collecting fees, understanding how the firm's cash flow operates, and understanding how partners get paid.

Today's litigation associates who want to become partners should be aware of and respond to the need to live and display "ownership" qualities, because that is the ticket to partnership in virtually any firm.

A longer version of this article first appeared in the January 14, 2002, issue of the National Law Journal. Reprinted with permission. *The list of outward manifestations in the second paragraph of this essay were taken from David Maister, "On the Meaning of Partnership," Managing the Professional Service Firm 186 (1993).*

Bias in the Practice of Law: A Personal Challenge

Susan Freya Olive

Gender bias (discussed here) and racial bias continue to plague us. We cannot sit by. Lawyers are leaders. We must demonstrate by word and example how to throw out the "garbage" of bias, so that together we can build a better profession and society.

It is fashionable to talk about eliminating bias in the legal system. We discuss means to accomplish this goal and we debate the extent to which it has been achieved. We know the history, of course. Although our nation's Declaration of Independence pronounced that "[a]ll men are created equal," "men" was not an all-inclusive term to the Founders. Well into the twentieth century, women still were classified in statutes as the "equal" of "children and idiots." Not until 1971 did the United States Supreme Court strike down a statute that gave preferential treatment to males solely because of their gender.

Today, most people recognize that assumptions of inferiority based on gender are wrong. Discrimination deprives us of important contributions from significant parts of our population. Still, the past continues to haunt us. Although blatant discrimination against women is less common, biased conduct has continued. Assumptions that shored up society's structure for so long have proved difficult to set aside.

Not surprisingly, recognition of and sensitivity to biased conduct varies by gender. A task force studying judicial reaction to biased behavior described some common incidents and found male judges were less troubled by biased conduct on the part of male attorneys and court personnel than were female judges. Almost three times as many female judges as male found it highly objectionable for a male attorney to tell, in chambers, jokes demeaning to women. Twice as many female judges found it objectionable for a female witness to be addressed by her first name when male witnesses were addressed by surnames.

Most women are sufficiently self-confident not to be defeated by rudeness, whispers, and jokes. After all, we recognize that we have far more opportunities than did our mothers. Women attorneys are particularly resilient. We know that, as lawyers, we are privileged compared to most of society. Thus, many of us simply laugh and go on.

But is the concern expressed by the judges appropriate? If it is, what should these judges, and the rest of us, do in these situations? Should we confront gender-biased conduct and its

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underlying assumption that females still are in some ways second-class citizens? If so, how can we do this in a professional manner?

Let me give a few examples. (1) I was at a meeting when a judge told a sexual joke featuring a male attorney and female secretary, and began a second joke of the "dumb blonde" variety. (2) I was at a meeting to discuss courtroom security. One of the men said that his "girls" were required to take certain steps to help maintain security. (3) I arrived at a deposition. My client (a professor) turned to me after seeing the opposing female attorney and asked, "Are all paralegals tall and blonde and elegant?"

In each case, gender bias was apparent. The question about the "paralegal" rested on an assumption that women occupy support, not professional, positions. The jokes and the reference to female employees as children rested on assumptions that women, being of lesser and unequal status, are not entitled to the respect ordinarily accorded adults. The fact that these underlying assumptions may not have been recognized consciously by the speakers makes them all the more pernicious.

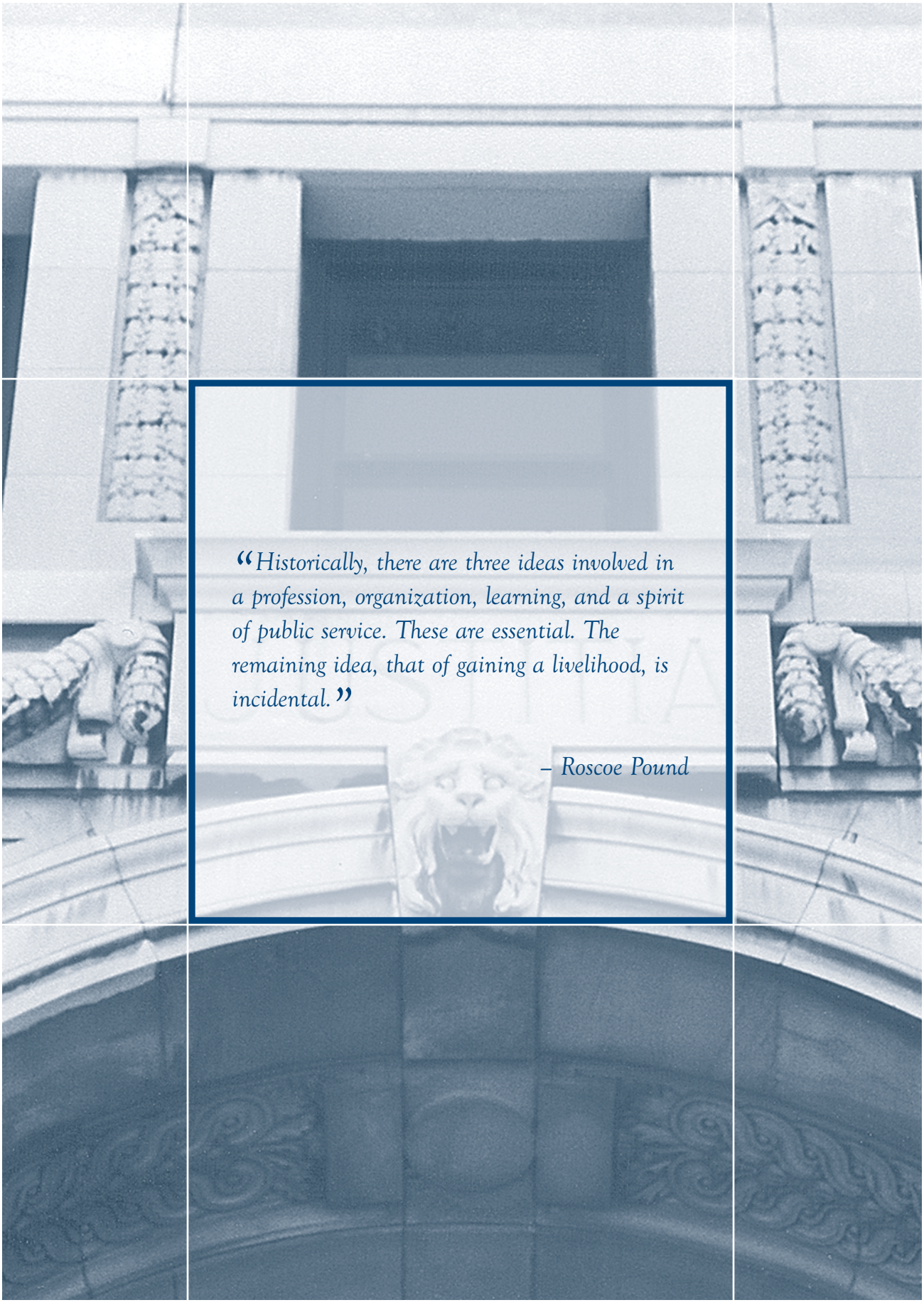
If we take no action in response to such statements, we reinforce these assumptions and validate the offensive speech. Biases often are expressed in contexts such as this, where no significant or immediate harm is perceptible. It is tempting to remain silent when the speaker is not intentionally offensive. Nonetheless, failing to react to such petty instances of gender bias will in the long term not only permit, but encourage, the perpetuation of gender discrimination both within the legal profession and society as a whole. Only by directly confronting the biased statements and expressions when they occur, can we force ourselves and others to recognize and challenge the assumptions that underlie them.

How did I react to the situations I described? In response to the jokes, I made a quick joke of my own about needing to clear the air and left the room briefly. In the second case, I turned to the speaker and said my guess was that he hired adults rather than children, in which case the word "women" would be more appropriate than "girls." In the third, I responded, "Not all paralegals meet that description, and in any event, we don't have one in this room today." None of these reactions took long. None were given or received as an offensive reprimand, although the message was understood. None, I am sure, will have a great effect if viewed in isolation. But some of you may remember Sesame Street's Oscar the Grouch singing a song about dropping "only one" piece of trash. First one person drops one piece of trash, then another person drops one piece of trash, then another, and another – until the huge, accumulated mountain of trash is taking over the world.

We must break the pattern. I challenge you with this paraphrase from a speech by Louise LaMothe, a California attorney, to United States bankruptcy judges: Will you be a part of the solution, or a part of the problem? The answer seems easy, but when the group gets together, with no women around, and someone tells a sexist joke, will you laugh along with the others?

The "get along" attitude, proving that one can "take it," and other excuses for silence are no longer good enough. Unless we are willing, each of us, to confront sexist words, actions, and assumptions each time we see them, we are contributing, piece by piece, to the "garbage" of gender bias that victimizes not only women attorneys, but our entire society.

A longer version of this article appeared as the author's President's Message to the North Carolina Association of Women Attorneys in March of 1993. Reprinted with permission.



"Historically, there are three ideas involved in a profession, organization, learning, and a spirit of public service. These are essential. The remaining idea, that of gaining a livelihood, is incidental."

– Roscoe Pound

Kill All the Lawyers?

David Villar Patton

Our collective memory is packed with famous quotations that are remembered out of context, and therefore, misunderstood. Most of us are familiar, for example, with this old saw from Shakespeare's Henry VI, Part II: "The first thing we do, let's kill all the lawyers." This line, spoken in the play by a rebellious villain, praises, rather than condemns, the legal profession.

The misunderstanding at the root of this quotation has a lingering presence in my personal life. My wife is a physician, and I am an attorney. Law and medicine usually mix like oil and water, except in my house, at least. My wife loves the fact that I am a lawyer. She seems to believe that my legal education eminently qualifies me to prepare our tax returns, balance the checkbook, pay the bills, and take out the garbage. For my part, my wife's profession has given me the opportunity to know more than my fair share of doctors on a personal level. Most of the physicians I have met treat me respectfully and cordially. I have even become friends with a number of them. Nevertheless, the "oil and water" problem comes up sooner or later, and I am often called upon to defend my profession to a few of my wife's colleagues in the "kill all the lawyers" crowd. This has led to an inordinate amount of introspection concerning my chosen profession and its place in society.

So, what if we killed all the lawyers? I am not an anthropologist, but the legal profession was almost certainly founded right after farming and prostitution. In any case, it seems that every civilization throughout history has featured the functional equivalent of lawyers. The ancient Celts had brehons and the Hawai'ians had kahunas. Shamans, medicine men, elders, prefects, chancellors, and so forth all understood, controlled, and applied the rules of their respective societies. In our Anglo-American tradition, lawyers have been doing the same since long before Blackstone arrived on the scene. Thus, by virtue of its endurance in nearly every time and place throughout human history, the legal profession must provide some indispensable public service.

What, then, is that service? In his book Eat the Rich, journalist/humorist P.J. O'Rourke examines the nature of economic systems. In one passage, he compares a society where capitalism succeeds to a society where capitalism fails. O'Rourke's example of failed capitalism is Russia, circa 1991, in the grip of post-Soviet turmoil. O'Rourke describes a laissez faire brand of lawless capitalism where businessmen settle contract disputes with machine guns. In such a

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place, society in general and the economy in particular crumble for want of the rule of law. Lawyers, then, implement the legal system and, consequently, preserve the rule of law that is essential for a successful, prosperous, and orderly modern society. Indeed, no one can seriously dispute that, as a means of dispute resolution, a lawsuit is far preferable to a mob hit. Nor can one sincerely question the broader implications that logically flow from this truth.

But why does the "oil and water" problem persist? That is, despite the obvious benefits flowing from our legal system, why do some people hate lawyers and resent the legal profession? I think Thomas Paine may have been on to something in his propaganda masterpiece, Common Sense: "[I]n America the law is King. For as in absolute governments the King is law . . . ." If the law is king, then we lawyers are the instrumentalities of the "king." We lawyers give life and substance to the rule of law, which, on balance, benefits society. At the same time, however, in societies where "the law is King," lawyers necessarily possess a great measure of power relative to non-lawyers. As human nature is wont to do, such disparate power fosters jealousy, resentment, and fear among non-lawyers.

We lawyers, then, provide a crucial public service and are oftentimes resented for it. How do we come to grips with this "oil and water" problem? While in law school, I had the honor of studying under Robert M. Duncan, a distinguished jurist, lawyer, and scholar. At the beginning of each class, Judge Duncan would take a few moments to discuss the legal implications of some noteworthy news story and invariably conclude his remarks by saying: "It's great to be a lawyer. Lawyers make this country great." Amen. Judge Duncan's words remain with me as I struggle to sort-out the "oil and water" problem and reconcile our chosen profession's place in society. At the end of the day, I can only conclude (as Judge Duncan's plain-spoken words suggest) that the law is a noble and indispensable calling that enriches our society in countless ways. One of the reasons I am a lawyer, therefore, is because it is good, in the moral sense, to be a lawyer. So, shall we kill all the lawyers? Shakespeare was right; it would be a very bad idea.

A Father's Legacy

Tilghman and Wiley Pope

After graduating from law school and passing the bar exam, many new lawyers seek counsel from senior partners in their firm and seasoned attorneys from their local bar as they learn the practice of law. One soon realizes that the practice of law is a continual learning process, even for the seasoned lawyer. We were fortunate enough to have the opportunity to enter into practice with the senior partner of our firm, our father, Patrick Harris ("Pat") Pope, and to draw from his thirty-five years in the practice of law. Among many other things, we learned that exhibiting professionalism is the trait of not only a good person, but also a great lawyer.

One of Pat's favorite quotes, to which he often referred as a model of professionalism, is by John Walter Wayland. Wayland said that a great lawyer is the man whose conduct proceeds from good will and an acute sense of propriety, and whose self-control is equal to all emergencies; who does not make the poor man conscious of his poverty, the obscure man of his obscurity, or any man of his inferiority or deformity; who is himself humbled if necessity compels him to humble another; who does not flatter wealth, cringe before power, or boast of his own possessions or achievements; who speaks with frankness but always with sincerity and sympathy; whose deed follows his word; who thinks of the rights and feelings of others, rather than his own; and who appears well in any company, a man with whom honor is sacred and virtue safe.

Our father taught us that professionalism encompasses every aspect of the practice of law. It extends to all with whom you come into contact in your professional capacity. Therefore, the basic principles upon which a professional lawyer is built should be applied equally to his or her colleagues, staff, clients, and to the judicial system. Our father's teachings on professionalism can be summarized in the following principles:

1. Treat your clients with dignity and listen to everything they tell you about their problem. Do not make them feel rushed or that you believe their problem to be insignificant. Once you have listened intently to the problem, you are in a better position to advise the client of any options.

2. Sometimes the best strategy, or alternative, is not to proceed directly into litigation. Our father said that, "[a]s lawyers, we should be counselors first and litigators second. We should try to resolve people's problems, encourage them to work things out, or to let us do so for them, in

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The authors are brothers and partners at Pope & Tart in Dunn.

a civil manner. . . . Our court system is over-burdened with cases which most likely could have been resolved without litigation if both attorneys had acted as counselors to their clients by attempting to solve their problem."

3. Always be considerate of extending professional courtesies to other lawyers. If opposing counsel requests additional time to file responsive pleadings or respond to discovery requests, grant it freely. There may be a time when you need the courtesy returned.

4. Never file frivolous objections or motions. If you are preparing discovery responses, conducting a deposition, or trying a case and you make an objection only to disrupt and harass the opposing counsel, then you are not acting as a professional. If opposing counsel is entitled by law to some information or documentation through discovery, then you generally achieve nothing of value by objecting and resisting. The only thing you are likely to achieve is agitating your relationship with opposing counsel. This may cause opposing counsel or the jury to form a negative opinion of you, thus impairing your ability to achieve the best result for your client.

5. Invest adequate time and thought in all your written work. The quality of the work that comes out of your office over your signature is a reflection of your professionalism. Sending something prepared in the heat of the moment may not be in the best interests of your client and may be detrimental to establishing good working relations with opposing counsel and the court.

6. Always return phone calls on the same day they are received. Whether it is a client or a colleague, the call may be one that requires an answer before tomorrow. When possible, return the calls yourself, especially to other lawyers. If you are unable to return the call, have a staff member return the call and advise the client or opposing counsel when to expect a response. One of the top complaints every year about lawyers from their clients is that they are not responsive to their inquiries about their case. This same principle also applies to emails and other correspondence.

7. If opposing counsel has provided you with a settlement offer, settlement demand, or plea arrangement, let him or her know when you expect to respond. A short note that it may take several weeks to schedule an appointment with your client to consider the matter and to formulate the response will allow the opposing counsel to advise his or her client of the time frame for the expected response. This will assist both you and opposing counsel by obviating unnecessary telephone calls or other correspondence during the time frame for the expected response.

8. When possible, avoid raising your voice with opposing counsel, and their clients and witnesses. While raising yours is sometimes necessary during cross examination, it can be done in a professional manner that will preserve your integrity with the opposing counsel, the witness, your client, and, importantly, the jury. Rarely do you ever gain any advantage from raising your voice or using abusive language toward opposing counsel or their client. If you have given adequate thought to your case and what you want to say, you can achieve your objective through means that do not require you to be any more adversarial than absolutely necessary.

9. Act professionally toward your staff. Your staff works long hours, partly to help assure your own success. If you are not professional toward them, they may not act professionally toward your clients, which ultimately is a reflection on you, and may impair your business.

Treating your staff professionally requires adherence to several other principles: communicate with your staff clearly and honestly, and fairly delegate responsibilities; realize the competing pressures in your staff members' lives that render it unfair to expect seven days of work in five; and appreciate and acknowledge each staff member's contribution to the success of your practice.

10. Remember that your greatest professional responsibility is to the judicial system and the pursuit of justice. Honesty and integrity toward the court should be your guiding principle. You are an officer of the court first and an attorney second, so respect the judicial system by conducting yourself in a professional manner, by your attire, your words, and your actions. While you may not always agree with the court's ruling, you must always respect it.

11. Extend the professionalism you give to the court beyond the judges. Act professionally toward the judges' staffs, the Clerk of Court's staffs, the bailiffs, the court reporters, and others involved in the administration of the courts. Each group plays an integral part in the efficient operation of the judicial system, and all are entitled to be treated professionally.

Acting with professionalism requires some forethought in your words and your actions. In 1997, our father was asked to give the keynote address at the Parents' Day assembly of the Norman Adrian Wiggins School of Law at Campbell University. He concluded his remarks with this quote from Frank Outlaw, which is fitting to conclude our observations and which we hope you will use as a guide as you develop your practice:

> Watch your thoughts; they become words.
> Watch your words; they become actions.
> Watch your actions; they become habits.
> Watch your habits; they become character.
> Watch your character; it becomes your destiny.

Lesson from a Giant

J. Norfleet Pruden III

Much of what I learned about lawyering in my early years of practice, I learned from my supervising partner and mentor, Ace Walker. But on at least one occasion during that time, I learned an important lesson in professionalism from another great lawyer.

One day, when I was a fledgling corporate lawyer under Ace's tutelage, Ace called me into his office. He was headed out of town and wanted me to cover for him at a meeting at which a somewhat complex corporate transaction involving one of our clients was to be discussed and structured.

Ace patiently walked me through the background of the transaction, our client's objectives, and the basic legal issues involved. Then he identified the lawyer who would be sitting across the table from me, representing the other side at the meeting: Russell Robinson.

I had met Russell Robinson a few times at that point in my career, but knew him mostly by reputation – as one of the country's top corporate lawyers, the one who literally "wrote the book" on North Carolina corporate law. I felt a little bit like David being sent off to meet Goliath, but without the slingshot. Ace, however, had more confidence in me than I did in myself, and he went off on his trip, and I went off to the meeting with Russell Robinson and our respective clients.

I don't remember much about the details of the meeting. I don't remember the legal or business issues, and I don't even remember the outcome. What I do remember, though, and will never forget, is how Russell treated me at that meeting.

There he was, a giant of corporate law, and there I was, a nervous neophyte, and I'm sure I gave him every opportunity to exploit the huge competence gap between us. But he didn't. He looked after his client's interests, of course, but in doing so he went out of his way to treat me as his equal (which I most assuredly was not). Whenever he was asked for his opinion about some nuance of the law, or the wisdom of a particular course of action, he asked me what I thought. And whenever I expressed an opinion, he either praised me for my wisdom or, if I was saying something really stupid, gently nudged me back to where I started so that I could appear to abandon my dumb ideas on my own accord and without further embarrassment.

In short, notwithstanding my youth and inexperience, I was treated like a fellow professional by one of the great professionals in my field. I'm sure that this was partly due to the simple

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fact that Russell Robinson is, as a matter of his personal character, a great gentleman. But I also believe that it was largely due to the fact that he is a great professional, too, that he felt a professional calling to treat a young lawyer with more dignity and respect than was deserved, and maybe a special calling to build up and befriend that young lawyer and show him a thing or two, not just about the law but about being a good lawyer.

Since that meeting many years ago, I have grown in age and self-confidence, although not necessarily in knowledge and wisdom. But as a result of that experience with Russell, I feel the same calling today that he must have felt back then. There is nothing to be gained in using age or experience or stature to intimidate or humiliate a fellow lawyer, especially a young lawyer. There is much to be gained in setting an example of courtesy and professional respect. In the episode I just recounted, Russell Robinson gained a lifelong admirer, and I gained a model of professionalism.

Lawyers as Officers

COLONEL (RET.) PAUL J. RAISIG

I am what you might call a "young-old" lawyer or perhaps an "old-young" lawyer. I was fifty-four when I enrolled in Campbell Law School. I was once chided by the Dean as being the senior citizen of my class. I responded by saying that if that were the case, I should be given a senior citizen's discount on my tuition. That, of course, did not happen.

Before law school, I spent twenty-six years in the United States Army as an artillery officer. That was when I had my first introduction to the legal profession. When I was a young officer, the Uniform Code of Military Justice (UCMJ) permitted non-JAG officers to represent soldiers in what were called Summary Court Martial trials, which were trials for minor offenses, much like those in civilian small claims courts. Although combat arms officers tended to avoid JAG Officers like the plague, I volunteered for the trials and thoroughly enjoyed the challenge. I derived great satisfaction from doing my best to represent my fellow soldiers.

As time went by, however, and the UCMJ changed, so did our nation's challenges. We faced the Cold War, the Korean War, and the Vietnam War – and we are now embroiled in the aftermath of a war in Iraq. After the long war in Vietnam, where I was baptized on the horrors of war, I was called back to the Pentagon to be the Deputy Director for Reorganization of the Army. In this position, I again became involved with the JAG Corps. After completing a study, we changed the Army's command structure so that all JAG personnel would be evaluated and rated by their JAG superiors as well as their commanders. Retired Major General William Suter, now Clerk of the United States Supreme Court, has remarked that this was one of the most important changes ever made to the Army's command and management structure affecting the military legal community.

After retiring from the Army and being a business executive in the Washington, D.C. area, I decided to go to law school. Although I knew nothing about the LSAT when I contacted Campbell to apply, I took the test only two months before starting school and lucked out. Campbell accepted me.

My time as a student was thoroughly enjoyable. I loved the many challenges – whether it was challenging my professors, competing on moot court teams, or clerking during the summer at a law firm. Perhaps my years as an Army paratrooper jumping out of airplanes prepared me for what law school and the practice of law would be like.

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Despite all the pleasure and satisfaction I have gotten from my new career, there has been one disappointment. This disappointment is related to the fundamental aspect of professionalism that attracted me to the legal profession – that lawyers are officers of the court. Having been an officer in the military for most of my adult life, the responsibilities and commitment to my troops and to my mission were absolute, and I assumed that was also true for lawyers. Regrettably, that sometimes is not the case. Although we have an active State Bar disciplinary process for lawyers who do not conduct themselves professionally, it would be far better if the misconduct were prevented rather than sanctioned.

Although more steps will need to be taken, as a member of the North Carolina Bar Association's Professionalism Committee, I proposed that students from each of the state's law schools be appointed to serve as ex officio members of the Committee. The proposal has been accepted, and the students should soon be appointed. The hope is that having law students on this important Committee will help bridge the gap between legal education and practice, and, more importantly, will begin training lawyers in the ways of the profession.

The Professionalism Committee, itself, is a good example of the kind of professionalism that attracted me to the law. The Committee consists of judges, active lawyers, and law professors, all of whom are true officers of the court and totally dedicated to their mission – raising the level of professionalism among members of the Bar. As an officer, myself, I am honored to be a part of this truly dedicated team of professionals. If the Committee can demonstrate to the student members the real life standards of professionalism and leadership that the public expects from lawyers, as officers of the court, then all will benefit.

I chose the legal profession because lawyers are officers, and there is no higher calling than to be an officer. Whether we are judges or justices, law professors, senior law partners, new associates, or law school graduates who just passed the Bar Exam, we lawyers are all officers, and, as such, we are leaders with the responsibility to lead. And whether we are in combat, in the courtroom, in the classroom, or in the office, it is our duty to lead with the utmost honesty, integrity, and professionalism.

Next: The Jumble®

RIPLEY RAND

It will happen to you. It may be several years from now, but it will happen. You will be sitting in your office reviewing documents, or making a presentation in a courtroom, or participating in a meeting or conference. There will be a reference to a legal doctrine that goes to the heart of what you are doing. You will break into a cold sweat as you are transported back to a law school classroom at the exact moment when your professor first discussed something like the dormant commerce clause, or inverse condemnation, or a resulting trust. You will remember hearing your conscience's running commentary as it said to you: "I will never, ever need this information, not even for the exam, no matter how long I practice law and no matter what sort of bizarre circumstances I end up confronting in my life."

You will see yourself turn to your newspaper (which you conveniently folded into fourths before coming to class) and go to work on 36 Down of the crossword (a five letter word for "slacken"). You will remember how confident you were that the synaptic exercise brought about by working the puzzle would be of more long-run benefit than whatever marginally passing interest you might have had in the dormant commerce clause/inverse condemnation/resulting trust. You will then return just as quickly to the present, where you are wracked with a sense of missed opportunity and bitter irony, your lesson learned.

While it might not seem like it as you rifle through a dusty treatise researching that missed law and muttering various profanities, your initial reaction was close to the right one. Do you really want to know all of the law? The good lawyers don't know all of the law (not even the specialists). They know how to assess a fact situation and tell you what the important issues are. They know how to listen and note the vulnerable points in the testimony or argument. They know how to read through a contract or other document and point out the red flags. They know how to distill their complicated cases down to their most compelling essences to educate and entertain (and most of the time convince) a jury. They know how to tell you what will happen months and years down the road if you take a certain position. They have a lot of common sense and sharply good instincts.

Admittedly, many of these traits come as a product of studying law, and the good lawyers do know a lot of the law. There is a time and a place for knowing the law, after all. But the good lawyers also know how to find the law when they need it (and know when they need to find it).

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When you have your crossword (or computer Solitaire) flashback, don't let that creeping sense of panic throw you. You learned in law school how to be a lawyer, and you will be able to deal with these situations when they present themselves. It will be just as important, though, that you react well to other kinds of circumstances. Like listening when a client is telling you what's going on and asking the right questions. Like watching other lawyers in court to see what works and what doesn't. Like reading through a magazine article to cleanse your editing palate before running through a draft for the last time. Like talking with lawyers who know more than you do about what they know and how they got to know it.

Like getting 36 Down. (It's "loose.")

The Rule of Three

WADE SMITH

In 1978 I was employed to represent a woman who was charged with first-degree murder. She was elegant and the mother of three beautiful children. She was at the top of the social ladder in her city and was married to what the world believed to be a loving and kind husband. But there was a dark truth carefully hidden from the community. Her successful and energetic husband was a cruel and violent person who brutally beat his wife, often in the presence of their children.

The beatings became more and more severe in 1977 and 1978. The level of the brutality escalated so greatly that my client began to believe she would be killed. Still, she sought no advice from the outside world. She and her husband appeared at parties holding hands and smiling brightly. They were engaging and appeared to be so in love. She pondered what she should do, but appearances were everything to her and, of course, to him. She decided to tell no one, telling herself, over and over, that it was for the sake of the children.

As the days passed, and the beatings continued, my client decided it would be prudent to acquire a firearm, just in case she was forced to act to save her own life. She felt ensuring her safety with a handgun was better than the consequences that would flow from telling someone what was happening or leaving her marriage. As I recall, she acquired a .38 caliber short barrel revolver and placed it in a spot in the house where she could reach it.

Her husband would often call from work, in a drunken rage, and she knew dangerous, terrifying moments would follow when he arrived home. One day he called with especially violent words, and she decided she had better be prepared. She put the pistol in the kitchen where she could reach it easily. When her husband entered the house, he lunged at her, and she reached for the gun. As he seized her neck with his hands, she fired the gun, pulling the trigger repeatedly even after the gun was empty. Her husband died immediately.

Because of his public image, the community was stunned. No one believed her husband had a mean bone in his body. We wondered how we would be able to establish to a jury that he was a cruel Dr. Jekyll and Mr. Hyde. Without resolving that question, we began our investigation and frequently encountered disbelief, numbness, and puzzlement among their good friends.

One day, I interviewed her hairdresser. She was eager to be helpful but gave me little that was useful. Hoping for more, I went back a second time. She gave me a little more, but still not

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much that was useful. I went back a third time, and, finally, hit the jackpot. What she told me was astounding – leading to perhaps the most effective testimony I have ever heard.

The hairdresser said that for years she had noticed what appeared to be bruises shaped like human hands on my client's neck. The hairdresser said she never really discussed them with my client, but she designed a haircut that would hide the bruises, and used it for the same purpose over the years. The hairdresser testified to this at trial, and my client was acquitted.

Although this case bristles with lessons about life, guns, remaining in marriages, and refusal to accept the truth, for a trial lawyer, it contains an equally important lesson: See the witness three times. And this lesson played out in other cases throughout the years.

Two decades later, I was employed to defend the first Native American Morehead Scholar at Chapel Hill, who was charged with first degree murder. When he went away to college, his high school girlfriend ended their relationship and started seeing another man – a proven thug and hoodlum. He had served many years in prison for fighting, cutting, and beating up people. While in prison, he had come within an eyelash of killing a prison guard with a knife.

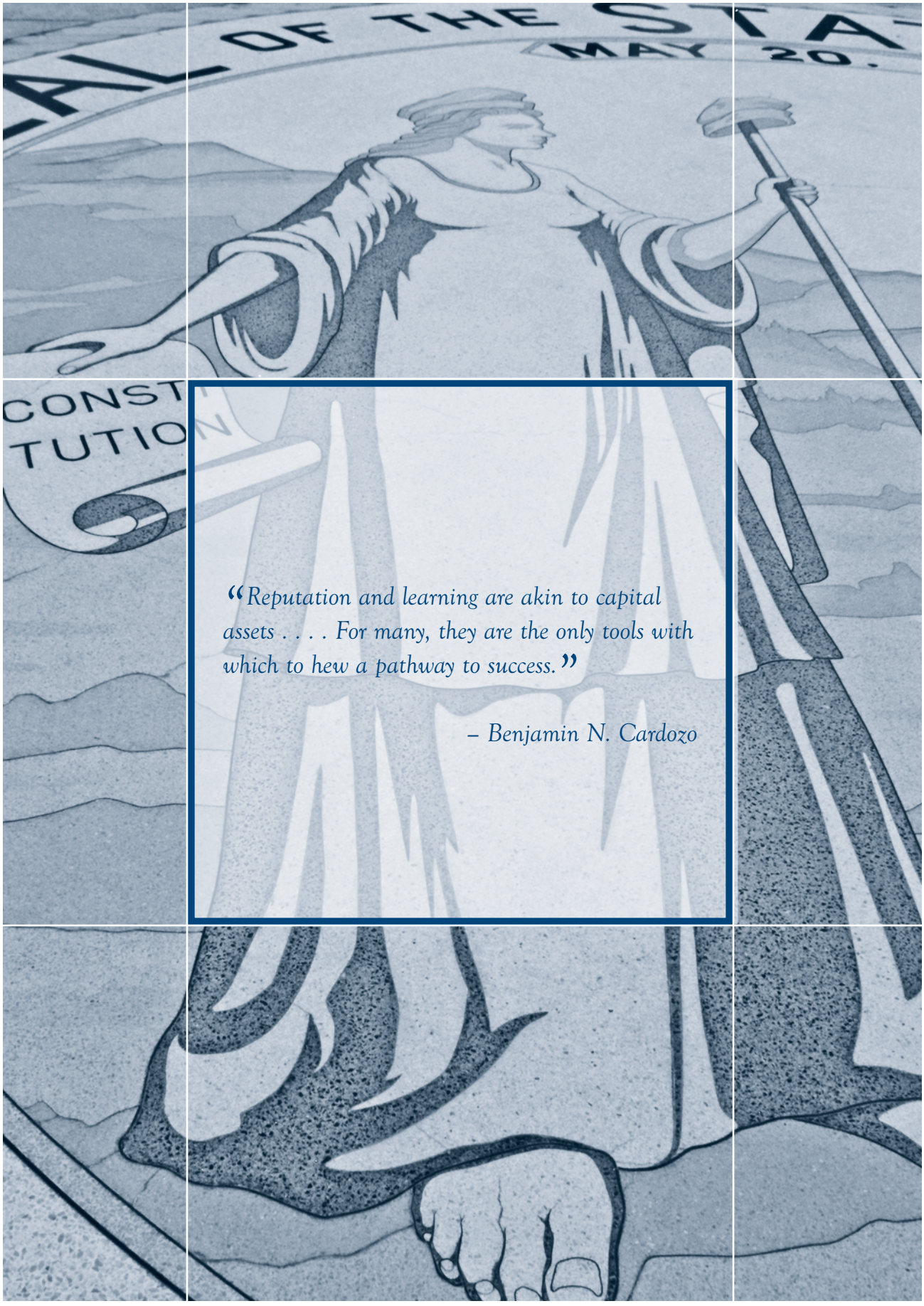
During the summer, the young Morehead Scholar returned to his hometown. One night his old girlfriend called him and told him she had been trying to break off the relationship with her new boyfriend. She told him her parents were out of town, and she had been receiving threatening phone calls. She said she was terrified, and our client foolishly went to her home to help her.

While at her house, sitting with her on the sofa in her living room, the new boyfriend crashed like a cannonball through the window and chased the two through the house. The young woman grabbed her father's gun, and she and our client locked themselves in the bathroom. The new boyfriend kicked down the door and rushed into the room. Our client fired the gun until it was empty, and he and his former girlfriend ran to a neighbor's house.

We interviewed the neighbor two times and each time received the same information. The information was useful – helping to show that our client and his former girlfriend were afraid – but not spectacular, and it did not adequately counter the prosecution's theory that the shooting was an execution, as evidenced by the number of shots fired.

We went back to see the neighbor a third time the night before she was scheduled to testify. We went back, hoping something would emerge that would give us the strength to overcome the prosecution's argument. On this third visit, we hit solid gold. The neighbor remembered that as our client and his former girlfriend were running toward her house, they repeatedly looked back over their shoulders. This was precisely what we needed. If they were looking back, they must have believed the deceased was still alive and would be coming after then. If they had executed him, they would have known he wasn't coming after them.

From these instances, I learned the most important lesson of my career as a trial lawyer: You don't get the winning evidence until you interview for the third time. Important witnesses must be interviewed and re-interviewed until you and the witness are tired of seeing each other. Only then will you be ready to win your case.



"Reputation and learning are akin to capital assets . . . . For many, they are the only tools with which to hew a pathway to success."

– Benjamin N. Cardozo

A Life-Long Professional: Julia Jones

Catherine E. Thompson

A few weeks ago, a young lawyer on her way to her first jury trial took me aside to ask me quietly about her clothing. Was it too flashy? Too plain? What about her jewelry? She is a very good lawyer, and her attire was certainly appropriate for court. I told her she looked just fine and was about to wish her good luck and head on my way, when I thought about Julia Jones. Julia wouldn't leave it at that. So she and I continued our conversation. We talked about the dress and demeanor of women who are trial lawyers, and how one's appearance and courtroom style were in large part about respecting the judge and connecting with the jury. I hope our conversation helped her. I know it helped me. It reminded me once again of my debt to Julia Jones for teaching me about professionalism in large ways and small.

I came to know Julia in the early 1980s, when she was a litigation associate at a Charlotte firm and I was a new lawyer at another firm. I, too, wanted to litigate cases, and I, too, was the first woman in my firm to practice in that area. Even though our firms were cheek by jowl competitors, she took me on as a friend and acted as an informal mentor. She knew from her own experience that the choice we had both made came with moments of self-doubt and loneliness. We met for lunch regularly, and she would inquire about my work, answering any question I asked and those I didn't have to ask. She included me in hiking trips and other weekend outings, using those occasions to remind me to take the time to do the things in life that I loved. She suggested ways for me to get involved in the community. She celebrated my successes and commiserated with me about my setbacks and disappointments.

Over the years I had her as a friend, Julia modeled professionalism in all ways. She encouraged me and others to do our best work, and she led by example. She gave back to others and to the community. And she allowed others to know her, and to know her as fully human even as she pursued her profession.

Julia had enormous drive, and she pushed herself to do her best work. This lesson was not lost on her opponents, on judges and juries, or on the associates who came behind her in her firm. Having been a schoolteacher before she went to law school at Wake Forest, she especially loved teaching young lawyers. In return, she expected them to do their best in the service of the clients and the legal system. In 1990, Julia was elected to be a Superior Court Judge. Being one of only a few women on the Superior Court did not daunt her in the least. She thoroughly rel-

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ished the role. It allowed her to put her talent for teaching to work in the professional venue she enjoyed the most – court. She fully embraced being a judge. As a judge, Julia took seriously her responsibilities to the public that had elected her and the juries that served in her court.

Before becoming a judge, Julia served as a State Bar Councilor and, in other ways, was a leader in the North Carolina State Bar. She served as a trustee of Queens College, her alma mater, and on the boards of the YMCA, YWCA, and Legal Services of the Southern Piedmont. She came by her inclination to give naturally, and it was reinforced in the early years of her life as a lawyer by a number of her colleagues in her firm, particularly several who themselves have modeled this aspect of professionalism by giving back to the community in significant ways: one is president of the Mecklenburg Bar; one is now a bankruptcy judge; one is a state senator; and one is a county commissioner.

After Julia was stricken with ovarian cancer in 1994, she continued to serve on the Superior Court when her health permitted, but she eventually decided not to run for re-election. She returned to her old firm in an of counsel role, mentoring and teaching young lawyers. In those last couple of years of her life, Julia took the art of giving to a new level: she showed her large community of family and friends that accepting from others is a critical part of the giving relationship and an important part of the well-lived life. She gave others the gift of allowing them to serve and take care of her – not an easy thing. But with that gift came an energy among Julia and her extended community that was powerful to witness.

Julia Jones died in 1999, way too young at only fifty. She had written much of her own memorial service and showed us again that she was a professional, even in the face of death. The last words of her service were classic Julia – the teacher, the judge, the counselor, and friend. As the full pews of Myers Park Baptist Church were about to rise to head across Queens Road to the reception at Queens College, the minister looked over the group and said with a smile full of knowledge and memory of our friend: "Julia said to remind everyone to be careful crossing the street." In that moment, the empty places in our hearts began to heal. She still would be a part of us, after all. And she is.

North Carolina's George Daly: State Champion of the Unpopular Cause

Sydnor Thompson

Some time ago, George Will wrote a column derogating the concept of public interest law and public interest lawyers. Perhaps he never read To Kill a Mockingbird and learned of its great lawyer-hero, Atticus Finch; perhaps he never heard of George Daly, another lawyer-hero from Charlotte, North Carolina. If he had, maybe he wouldn't have written that column.

Until his retirement in 2001, George Daly practiced law for about thirty-five years. During much of that time, he was Atticus Finch incarnate in Charlotte. In fact, he shared Finch's Deep South upbringing and culture, and his dedication to taking on unpopular causes.

George was born in Columbia, Mississippi in 1937, the son of a medical practitioner who established a nineteen-bed hospital in a town that had had no hospital at all. George left Mississippi for Princeton, graduating in 1958, and later graduating from Harvard Law School in 1961.

In 1965, George began to practice law in Charlotte on a red-letter day for that city. For a time he was associated with the law firm of Julius Chambers and James Ferguson. At another time he practiced with Hugh Casey and Walter Bennett. Eventually he set up his own shop and still later practiced law with his daughter, Anna.

Between the late 1960s and 1990s, George perhaps unwittingly constituted himself the conscience of the Charlotte Bar. He took on unpopular causes without regard to the community's conservative bent and its effect upon his law practice. He defended Vietnam War protesters seeking to avoid the draft. He defended hippies who ran afoul of the vagrancy and drug laws. He represented environmentalists who challenged the construction of nuclear reactors for the generation of electricity. He represented employees who were the victims of age discrimination. He defended persons who were charged with desecrating the American flag. He brought suits challenging overcrowded prison conditions. He defended motion picture theater owners who were charged with showing obscene films. He even represented the Ku Klux Klan when it was denied a permit to conduct a peaceable parade.

Decade by decade, George took on unpopular cases – and many of those cases are now recognized as landmarks on North Carolina's road to freedom. In the late 1960s, George began to represent persons who protested the Vietnam War and refused to be drafted into the service. In his first such case, Judge Wilson Warlick ruled against his client, but the United States Court of

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Appeals for the Fourth Circuit reversed Judge Warlick, ruling that George's client had the right to a jury trial on the question of whether he qualified as a conscientious objector. After that, George won seven or eight other such cases, until finally the indictments were dismissed by the prosecutor without trial.

Perhaps George's first great civil rights victory was a 1969 trial in the United States District Court for the Western District of North Carolina before Judge James B. McMillan. In that case, the Charlotte Police Department was enjoined from threatening, interrogating, investigating, or arresting a group of hippies who were living in a somewhat derelict house. After the defendants were arrested for violating the vagrancy statute, the case was referred to a three-judge district court. Judge Braxton Craven of the Fourth Circuit authored the opinion that declared North Carolina's vagrancy statute unconstitutional under the Fourteenth Amendment. He wrote that "a man is free to be a hippie, a Methodist, a Jew, a Black Panther, a Kiwanian, or even a Communist, so long as his conduct does not imperil others."

Soon George was leading the movement to establish a Charlotte chapter of the American Civil Liberties Union. With the late Ruth Wanzer, the late Dr. Raymond Wheeler and his wife, Julie Wheeler, former County Commissioner Jim Richardson, and others, he founded the local chapter in 1970. Just one year later, in 1971, when President Nixon visited the Charlotte Coliseum in connection with "Billy Graham Day," a group of VFW members recruited by the United States Secret Service ejected some protesters who were dressed in hippie style. George brought suit against the police and the Secret Service, alleging that his clients were unconstitutionally excluded from that public event. The federal district court preliminarily enjoined the Secret Service and the Charlotte police from denying the plaintiffs admission. This result was ultimately confirmed by a three-judge district court against defendants' claim of governmental immunity from any such injunction.

In two more early 1970s cases, George brought suit against the Charlotte police for using excessive force in making arrests. Perhaps predictably, the cases resulted in verdicts for the police, even though George's clients had been badly abused. The next two abuse cases George brought resulted in jury verdicts for the plaintiffs in the amount of $10. Although the judgments were small, the cases were monumental. These cases marked the first times a local jury had been convinced that the police had acted unlawfully. Thereafter, the verdicts climbed quickly to $3,500 and even $8,500. Remarkably, George was later appointed chairman of the Charlotte Citizens' Police Review Board, which considers appeals from disciplinary actions the Police Department takes against its officers.

In the 1980s, George's attention was directed to cases involving violation of Title VII of the 1964 Civil Rights Act with respect to promotion practices for female employees and violation of the 1967 Age Discrimination in Employment Act with respect to promotion and other discriminatory practices against older employees. The United States Court of Appeals upheld judgments in favor of George's clients in both types of cases.

Some of George's best known civil rights cases involved religious issues. In one case, decided in 1990, Judge McMillan ruled in favor of George's client, holding that the practice of a state district judge in opening court with a prayer violated the First Amendment Establishment

Clause. His decision was later affirmed by a three-judge district court. During the trial, and unfortunately on Thanksgiving Day when no one was present, someone threw a chunk of concrete through the window of George's office, presumably someone who was disgruntled about George's involvement in such a case.

More recently, and ironically, an act of God deprived George of the opportunity to have declared unconstitutional a display of the Ten Commandments in the main courtroom of Haywood County, North Carolina. George's client died before the case could be heard, and the action was dismissed.

Of special interest to North Carolina lawyers is the fact that it was George Daly who brought an action on behalf of an applicant for the North Carolina Bar Examination who was told he could not sit for the examination because he did not satisfy the one-year residency requirement. The court declared the requirement unconstitutional as a violation of the interstate commerce clause. Earlier, when I moved from New York to North Carolina in 1954 to join my present firm, it took twenty-three months for me to qualify to take the Bar Examination because of that residence requirement. Many more recently admitted attorneys owe George a debt of gratitude on this account.

In February 2001, George was recognized for his career-long dedication to civil liberties. The ACLU of North Carolina presented him with the Frank Porter Graham Award. The letter notifying him of the award stated the following:

> Your many years of service to the ACLU of North Carolina, your innovative approaches to finding solutions to civil liberties dilemmas, and your true devotion to the protection and enhancement of civil liberties has been bold and unwavering. Your efforts are an inspiration to all of us who work to safeguard individual rights for all of our citizens.

As one who has largely undertaken to transfer money from one deep corporate pocket to another throughout my legal career, I am wont to say that my greatest contribution to American jurisprudence (with the possible exception of a couple of opinions I wrote as a North Carolina Court of Appeals judge) has been to say a good word on behalf of my friend George Daly. He has reflected the highest credit upon our profession in taking on unpopular causes, often without receiving a fee commensurate with his services.

This is a modified verion of an essay that was previously published in the North Carolina State Bar Journal. Reprinted with permission.

A Common Goal: Seeking Justice with Professionalism and Civility

MELVIN F. WRIGHT, JR.

Members of the North Carolina Trial Bar share a strong tradition of civility and collegiality. Acts of unprofessional conduct embarrass and upset members of our profession. They also unfavorably impact public perception of attorneys. When rancor, incivility, or unprofessionalism erupts, it is not difficult to imagine a possible cause. Perhaps the offending party did not have a mentor and does not know better. Perhaps the local Bar does not have a peer-counseling program, and neither judges nor lawyers have consulted with the attorney about how to help. Maybe there is no tradition of storytelling to relate how others have handled similar situations, as North Carolina lawyer Walter Bennett suggests in his book, The Lawyer's Myth.

Recently, I received a letter from a lawyer who was upset that the District Attorney in his Judicial District considers all criminal defense lawyers "the enemy." According to this lawyer, the DA treats defense lawyers and their clients the same. He will not associate with or allow his assistants to fraternize with attorneys who represent criminal defendants. Such behavior is unfortunate – and unprofessional. The story of how two outstanding Charlotte lawyers handled a trial several years ago shows a more positive way for prosecutors and defense lawyers to relate in an adversarial setting – a way that upholds the Trial Bar's tradition of professionalism and civility.

Eben Rawls is a well-known and highly respected criminal defense lawyer in the Mecklenburg County Bar. A few years ago, he represented the defendant in a widely publicized and highly charged case. His client allegedly kidnapped a thirteen-year-old girl from church at approximately 11 a.m. on Palm Sunday, took her to a remote, wooded area in Lincoln County, raped her, and left her gagged, bound, and blindfolded. Unable to see or move freely, the girl crawled more than 100 yards on her stomach to get out of the woods. Her only directional indicator was the occasional sound of a passing car on an isolated country road. Thankfully, she was found by the side of the road at approximately 7 that night.

At the initial arraignment in Superior Court, while walking down the center aisle of the courtroom, Mr. Rawls was suddenly jostled and struck by an angry man who slammed his shoulder into Mr. Rawls' chest. Mr. Rawls learned the aggressor was the victim's father, who was accompanied by a large contingency from his church. The emotional, volatile situation could easily have erupted into further violence and chaos. Realizing that this situation required the

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The author is Executive Director of the North Carolina Chief Justice's Commission on Professionalism.
The author would like to give special thanks to Eben T. Rawls III for his permission and assistance in sharing this story.

utmost in professionalism, Mr. Rawls approached Barry Cook, the Assistant District Attorney assigned to the case. He related what had happened and asked Mr. Cook to try to control the family and friends of the victim. Mr. Rawls committed to Mr. Cook that he was going to try the case with the highest level of professionalism, civility, dignity, and integrity. He asked Mr. Cook to convey this information to the family so they would know that the defense was not interested in causing them further pain.

Mr. Cook, who is also a competent and ethical lawyer, agreed to join Mr. Rawls in acting in accordance with the highest standards of trial practice. They knew the case would take several weeks to try. They committed to being respectful toward each other, the judge, the parties, the witnesses, and court personnel. They also decided to fully disclose and discuss the relevant law and rules of evidence with the judge, and not "sandbag" him or purposefully lead him into reversible error. Both lawyers focused on winning, but they also realized that their responsibility as advocates did not require them to be uncivil, disrespectful, or demeaning. In fact, unprofessional conduct would cause them to lose the respect of the judge and jury, thereby damaging their cases and making them less effective advocates.

On the first day of trial, Mr. Rawls and the defendant were seated at their table when the prosecuting witness and her father came into the courtroom. He could see the hatred in the father's eyes and feel the hurt and shame in the young girl's body language. Just then, Mr. Cook entered. He walked over to Mr. Rawls and shook hands. What a great act of professionalism! That simple handshake sent the message to all in the courtroom, looking on with anticipation, that these two lawyers would be civil to each other, that they would be zealous but honorable advocates.

The trial was difficult and emotional. Both lawyers fought hard for their clients, but remained steadfast in their agreement to stay on the high road of professionalism. Although the judge entered a sequestration order, the victim's father was allowed to sit with his daughter throughout the trial. As the victim and her father watched, day-by-day during five weeks of trial, they began to appreciate our criminal justice system at work. They saw both lawyers bring professionalism and courteous civility into a place where more violence might have resulted. The victim and her family and friends were able to process their grief, and they saw the defendant receive a fair trial.

When the case ended, the two lawyers again shook hands. They congratulated each other for fulfilling their obligations honorably on behalf of their clients. As Mr. Rawls gathered his files to leave the courtroom, the prosecuting witness and her father approached and asked to speak with him. Mr. Rawls agreed. He could see that the father's hatred had dissipated. The same man who struck Mr. Rawls on their first encounter offered to shake hands. He told Mr. Rawls that he understands every defendant in our country is entitled to the best legal representation he or she can get. He said that he and his daughter were grateful for the way Mr. Rawls treated them on cross-examination and the respectful way he treated everyone in the courtroom. Both the victim's father and the jury foreman have referred clients to Mr. Rawls' firm since the trial.

The defendant also developed a respect for the lawyers and the judicial system through the

conduct of his trial. He maintained his innocence, but knew that Mr. Cook handled the trial professionally and not as a personal vendetta.

This story shows how a defense attorney and prosecutor can better serve justice by conducting themselves with civility — a critically important element of professionalism. As Stephen L. Carter writes in his book Civility, "Civility assumes that we will disagree; it requires us not to mask our differences but to resolve them respectfully." All attorneys want to win, but we need to focus on the process just as much as the result. By doing so, we uphold the honorable tradition of civility and the honorable nature of our profession.

When a client wants to use the legal system to punish and humiliate a spouse, be guaranteed a specific verdict, or bully a smaller business competitor, who better than the lawyer to show that the court system is about justice, not grudges or intimidation? As Eben Rawls said, "Because of the adversarial nature of our profession, sometimes a lawyer has to come down hard on a witness. But that should happen only after the lawyer has demonstrated the utmost in professionalism to justify the attack."

The Prosecution is not the enemy of the Defense Bar, and the Defense Bar is not the enemy of the Prosecution. Both the Prosecution and the Defense Bar have the obligation to seek justice while zealously and honestly representing their clients. Always assure your clients you will work hard on their behalf and represent them to the best of your ability, but be sure they also know you will represent them in a professional and civil manner. Then, our legal system and everyone associated with it wins.

Early Reflections on the Practice of Law

James R. Wyche

As a recent law school graduate and current Bar applicant, my "reflections on the practice of law" are extremely limited. All new lawyers are similar in that they do not have extensive experience practicing law, but each of us remains unique in what motivated us to become lawyers. My motivation changed over time, both before and during my law school years. At times, it was the excitement of winning a debate, while at others it was the opportunity to solve a problem for someone in need. Several of us may have political aspirations, and others may be focused on a career outside of the law, but for which the law serves as the gateway. Some may even view the profession as a calling, while others are simply doing what their families expect. But regardless of our different motivations, we are united as new members of the legal profession – and we all have the opportunity to choose how we practice law and live our lives as lawyers. To state the obvious, it is up to us to choose what our later reflections on the practice of law will be.

While we enter the legal profession united in our lack of legal experience, we will diverge in the paths we take through the course of our careers. Whether practicing in rural Appalachia or the sunny coast of North Carolina, or somewhere in between, we will share the similar experience of long hours, demanding clients, and the delicate balance between family and work. Just as we were motivated by different reasons to become attorneys, we will be motivated by different reasons to pursue different paths. Yet, as our paths diverge, there is another common aspect to our journeys: others' expectations of us. Our clients, our families, and our friends expect great things from us. Because we have already achieved much, we will be expected to continue to succeed – to win our cases, close our deals, and reap significant financial reward. While we may share in these hopes and expectations, we should remember to strive to achieve the expectations of two other interested entities: our fellow lawyers, both past and present, and our communities.

Over the course of history, lawyers were one of the few learned professionals in society who were community leaders and the people's trusted counselors. They did not achieve their social status based on their success in litigation or around a conference table, but rather on their ability to help others with matters of critical life importance. While modern society has discredited this historical perception of our profession – perhaps due to our fellow lawyers' own actions – it should be our mutual charge to preserve the age-old expectation of lawyers as ethical leaders, impartial advocates of their clients, and servants of their communities. Although recent times

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The author is an associate with Kennedy Covington Lobdell & Hickman, LLP, in Charlotte. This essay was written while the author was studying for the North Carolina Bar in 2003. We are happy to report that he has since passed the examination and is now a Bar member.

may have altered this perspective, we have a shared opportunity to reshape it.

Although our career paths will vary and be unique, we are now bound on a common journey as members of the North Carolina Bar. Whatever our legal experiences may become, we should remain united in one respect: an unwavering commitment to the betterment of our clients, our profession, and our communities through our moral leadership and professional civility. Later, when we are at the end of our careers and we are sharing our more informed "reflections on the practice of law," let us reflect together on our different career paths and legal practices, but also on the moral leadership and professional civility we embodied along the way.

The Lawyer's Creed

As guardians of the American legal system, lawyers have a special responsibility to honor the rule of law and advance justice, to provide excellent service to their clients, to respect opposing parties and their counsel, and to serve the public and the profession. In recognition of these responsibilities, North Carolina lawyers subscribe to the following professional creed:

First and foremost, I will strive to do honor to the search for justice.

To the courts, and other tribunals, and to those who assist them, I offer respect, truthfulness, courtesy, and punctuality.

To my clients, I offer competence, faithfulness, diligence, courtesy, and good judgment. I will strive to represent them as I would want to be represented and to be worthy of their trust.

To opposing parties and their counsel, I offer fairness, integrity, courtesy, and civility. I will seek reconciliation and, if unsuccessful, will strive to make our dispute a dignified one.

To the public and our systems of justice, I offer service. I will strive to improve my professional skills, the law, and our legal system, to make the law and our legal system accessible to all, and to represent those in need of legal service without regard to the popularity of the cause.

To the profession, I offer my dedication to its highest goals and my diligence in seeking to achieve those goals. I will strive to keep our profession a high calling in the spirit of pro bono and public service, and to conduct myself at all times in a manner that will reflect honor upon the profession.

To the individual members of the profession, I offer my services in mentorship when requested and when consistent with the ethical representation of my clients.

The Principles of Professional Courtesy

In 1989, the North Carolina Bar Association's Bench, Bar, and Law School Liaison Committee – which is composed of judges, law school deans, and leading lawyers – responded to the perceived decline of professionalism in the Bar by identifying aspirational standards of professional conduct. The Committee emphasized that the standards were not meant to be minimum or mandatory, but instead to be the standards related to our profession as a higher calling. The Committee's standards were later adopted by the Association's Board of Governors.

Now, more than a decade later, the Association has decided it is time for North Carolina lawyers to re-commit themselves to these Principles and to dedicate themselves anew to the legal profession as a higher calling.

The Preamble

The degree of respect which the general public holds for the legal profession is enhanced when the members of the profession demonstrate respect for one another. Civility and manners, no less than a deep-rooted, broad respect for the law, are the hallmarks of an enlightened and effective system of justice. Thoughtful, courteous conduct, manners, and attitudes, constantly practiced by the Bench and Bar alike, will improve both the reality and the public perception of our legal system.

It is hoped that these Principles will serve as a continuing reminder to both Bench and Bar that the successful, indeed the enjoyable, practice of law requires something more than professional competence and that new and seasoned lawyers alike will practice patience, courtesy, and civility at all levels and stages of their calling.

Courtesy Toward the Court

A lawyer should speak or write courteously and respectfully in all communications with the Court.

A lawyer who has a personal or social relationship with a judge should never intimate that such relationship will have any bearing or influence on matters then pending or likely to be brought before that judge.

A lawyer should never suggest that a client contact the court concerning a case that is or is likely to be before the court, and conversely should, if the likelihood of such conduct is suspected, forcefully discourage it.

A lawyer should promptly notify the court, as well as all counsel and witnesses, of any delays, continuances, or cancellations of proceedings.

A lawyer appearing in a public proceeding should be attired in a manner that connotes respect for the court.

A lawyer should stand when addressing the court.

A lawyer should avoid visual or verbal displays of temper toward the court, and especially upon a bench ruling against him.

Courtesy Toward Clients

A lawyer should maintain a cordial and respectful relationship with clients and be courteously candid, even when there is a disagreement with the client as to the manner in which the client's case should proceed.

Courtesy Toward Other Counsel

A lawyer should maintain a cordial and respectful relationship with other lawyers and should always be courteous and candid with opposing counsel, reserving the right to disagree without being disagreeable.

Before scheduling depositions, hearings, or motions, a lawyer should endeavor to contact opposing counsel and agree on a convenient time, date, and place so as to reasonably accommodate all counsel. When it becomes necessary to cancel scheduled hearings or depositions, opposing counsel should be notified promptly.

If a lawyer knows that his client is going to submit to a voluntary dismissal of a matter, the lawyer should promptly notify opposing counsel to avoid unnecessary trial preparation and expense.

A lawyer should refrain from curt or personally critical remarks concerning opposing counsel.

A lawyer should return other counsel's telephone calls and respond to written communications in a timely manner.

A lawyer in the courtroom should do the following whenever reasonably possible:

- avoid interruption of opposing counsel except when necessary to voice an objection.
- unless otherwise directed by the court, present an exhibit to opposing counsel before presenting the exhibit to a witness.
- avoid standing between the witness and opposing counsel during examination.
- provide opposing counsel with a copy of any opinion or document given to the court.
- encourage appropriate courtroom behavior by clients and witnesses.

Courtesy Toward Other Personnel

A lawyer should act respectfully and speak cordially to all court personnel with an awareness that they are an integral part of the judicial system.

A lawyer should, whenever possible, be mindful of the constraints of time when filing papers, recording documents and initiating probate proceedings, and attempt to schedule in advance if extended time is anticipated.

Courtesy By the Court Toward Lawyers

Judges should accommodate reasonable personal requests by lawyers.

A judge should treat lawyers and litigants with courtesy, and, while maintaining control of proceedings, should attempt to do so in a manner intended to avoid personal humiliation.

Judges should conduct themselves in social settings in a way that recognizes attempts to avoid the perceptions of favoritism that may arise when they are seen with an attorney or party in pending litigation.

IN THE SUPREME COURT OF NORTH CAROLINA

Order Adopting Amendment to Rule 3.1 of the General Rules of Practice For The Superior and District Courts Supplemental To The Rules Of Civil Procedure

Order Adopting Amendments to Rule 3.1 of the General Rules Of Practice For The Superior and District Courts Supplemental To The Rules of Civil Procedure

WHEREAS, section § 7A-32 of the North Carolina General Statutes provides that the Supreme Court has the power to supervise and control the proceedings of any courts of the General Court of Justice, and

NOW, THEREFORE, pursuant to N.C.G.S. § 7A-32, Rule 3.1 of the General Rules Of Practice For The Superior And District Courts Supplemental To Rules Of Civil Procedure is hereby amended to read as in the following pages. These amended Rules shall be effective on the 4th of March, 2004.

Adopted by the Court in conference the 4th day of March, 2004. The Appellate Division Reporter shall publish Rule 3.1 of the General Rules Of Practice For The Superior and District Courts Supplemental to Rules of Civil Procedure in its entirety, as amended through this action, at the earliest practicable date.

I. Beverly Lake, C.J.
For the Court

Rule 3.1 Guidelines for Resolving Scheduling Conflicts

(a) In resolving scheduling conflicts when an attorney has conflicting engagements in different courts, the following priorities should ordinarily prevail:

1. Appellate courts should prevail over trial courts.

2. Any of the trial court matters listed in this subdivision, regardless of trial division, should prevail over any trial court matter not listed in this subdivision, regardless of trial division; there is no priority among the matters listed in this subdivision:

- any trial or hearing in a capital case;
- the trial in any case designated pursuant to Rules 2.1 of these Rules;
- the trial in a civil action that has been peremptorily set as the first case for trial at a session of superior court;
- the trial of a criminal case in superior court, when the defendant is in jail or when the defendant is charged with a Class A through E felony and the trial is reasonably expected to last for more than one week;
- the trial in an action or proceeding in district court in which any of the following is contested:
- termination of parental rights,
- child custody,
- adjudication of abuse, neglect or dependency or disposition following adjudication
- interim or final equitable distribution
- alimony or post-separation support

3. When none of the above priorities applies, priority shall be as follows: superior court, district court, magistrate's court.

(b) When an attorney learns of a scheduling conflict between matters in the same priority category, the attorney shall promptly give written notice to opposing counsel, the clerk of all courts and the appropriate judges in all cases, stating therein the circumstances relevant to resolution of the conflict under these guidelines. When the attorney learns of the conflict before the date on which the matters are scheduled to be heard, the appropriate judges are Senior Resident Superior Court Judges for matters pending in the Superior Court Division and Chief District Court Judges for matters pending in the District Court Division; otherwise the appropriate judges are the judges presiding over those matters. Theappropriate judges should promptly confer, resolve the conflict, and notify counsel of the resolution.

(c) In resolving scheduling conflicts between court proceedings matters in the same priority category the presiding judges should give consideration to the following:

- the comparative age of the cases;
- the order in which the trial dates were set by published calendar, order or notice;
- the complexity of the cases;
- the estimated trial time;
- the number of attorneys and parties involved;
- whether the trial involves a jury;
- the difficulty or ease of rescheduling;

- the availability of witnesses, especially a child witness, an expert witness or a witness who must travel a long distance; -whether the trial in one of the cases had already started when the other was scheduled to begin.

(d) When settlement proceedings have been ordered in superior or district court cases, only trials, hearings upon dispositive motions, and hearings upon motions scheduled for counties with less than one court session per month shall have precedence over settlement proceedings.

(e) When a mediator, other neutral, or attorney learns of a scheduling conflict between a court proceeding and a settlement proceeding, the mediator, other neutral, unrepresented parties or attorneys shall promptly give written notice to the appropriate judges and request them to resolve the conflict; stating therein the circumstances relevant to a determination under (d) above.

(f) Nothing in these guidelines is intended to prevent courts from voluntarily yielding a favorable scheduling position, and judges of all courts are urged to communicate with each other in an effort to lessen the impact of conflicts and continuances on all courts.