Iconography and the Polite Art of Saying Nice Doggie

Beau James Brock
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By Beau James Brock
Barbra Streisand had it wrong, practicing attorneys are the luckiest people in the world! We have an opportunity every morning to do God's work on earth, to serve our fellow man, especially those in need.

Recently, I accompanied a good friend to the hospital, and waited (im)patiently for him to return from the operating room where he was being attended to by a young cardiologist. My friend "lovingly" referred to him as Doogie Howser and his life was literally in his hands. Complications were observed in my friend's case and the young doctor had the foresight to delay going forward until a specialist was available to perform the requisite operation. Dr. Doogie described the specialist to me in the following manner saying, "If my dad had to have this surgery, I would want Dr. X to perform it."

It gave me comfort that this brash young doctor was capable of knowing his limits, and at the same time knew exactly how to communicate, with empathy, in a moment of personal crisis. He was professional and almost against type as a surgeon in showing a warm bed-side manner to me. In a moment of introspection, it wasn't just his message that was important, but the manner in which I heard it that shaped the communication. Doctors, specifically surgeons, are iconic figures in our society. Cold-steeled instruments in the hands of cold-hearted cutters, that in order to effectively do their jobs meticulously and without emotion, must figuratively shave off a layer of their own humanity. This is more than a stereotype and lies deep in the depths of our culture's mythology of literature and film.

Just as surgeons are trapped by their own iconography, so are attorneys. Will Rogers said, "diplomacy is the art of saying 'nice doggie' until you can find a rock!" As an American humorist, he might have said the same thing about the practice of law and how it is adjudged in our society. We were taught in law school the professional ideal of meeting in the arena as lions, but outside of it to conduct ourselves with decorum and civility. Some in our society balk at this practice as artificial and consider those that conduct themselves accordingly as weak and even contemptuous. However, these same folks certainly would admonish "little Johnny" if he were to refuse to participate in pre-game prayer at midfield or shake hands with his opponent afterward.

It is our American ethic of self-discipline that compels us to always attempt to comport ourselves as professionals in the practice of law. It is this bit of granite chipped off every monument lifted to our forefathers that forever rests inside our souls and exudes our daily efforts, not to conform, but to elevate our system by conscious acts of public servitude. The Duke of Wellington famously said the Battle of Waterloo was won on the playing fields of Eton. Similarly, even though our ancestors may have been kicked out of every decent country in the world, our abiding faith in our maker and the brotherhood of man enables us to grow up into men and women, endowed with the lessons of our own kindergarten communities, into similar paladins of justice. Thus, in the midst of crisis, one in which you are responsible not for yourself, but for another as their only counsel, and the others that come after that may be impacted by your efforts, you will give good account, your character hewn from our cultural base which has already braced you for the storm.

We internally lack for nothing in our ability to meet the ethical challenges and countless encounters that test our courage in choosing to avoid the temptation of the dark side of our nature. Does every attorney fail, at times? Yes. Are we given another opportunity to choose again? Yes. Can we make the right choice, then? Yes. Once you become a litigator, I think you always consider yourself a litigator. One of my enduring memories was a jury instruction about reasonable doubt in which the judge reminded the jury, "all human endeavor falls short of perfection." Whether you are a "Super Lawyer," AV rated, or merely a young practicing huckster trying to pay the bills, and learning how to finance your first "big" case, you will never achieve

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perfection in your practice of law, but you should never quit trying to realize the ideal of professionalism, not through your own prism, but through the eyes of your care—your client, your neighbors, your community, your colleagues.

Every opportunity for attorneys to move out of the abyss of shysterism, however, seems to be shattered regularly by public images of unprofessionalism and downright criminality. In the most watched film of last year, the shining beacon of hope for law and order in Gotham is consumed by revenge converting blind justice into blind luck. There, it was not the manic anachronist, who was the tragic character, but the lawyer who failed to persevere after being elevated in the plot as both the city’s messiah and Batman’s martyr.

Just like Dr. Doogie above spoke of the specialist who would be operating on my friend, we should all strive to be named by our colleagues in a moment of need.

What better compliment than to be an attorney who other attorneys call by name to assist them when a fire bursts out of control on them. If we ascribe to attempt to reach the pinnacle of professionalism in our daily lives, we will succeed more and more each day. These ripples of success on the pond of our community spread far, sometimes without acute result, but without which our system cannot continue, and despite its flaws, to paraphrase Lincoln, is still “the last best hope of earth” knowing fully God will bless us for our efforts.

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in conduct intended to disrupt a tribunal.” Rule 3.5 Comment [4] states that a lawyer’s function is to provide “evidence and argument” so that a case may be legally decided. The Comment goes on to state that “[r]efraining from abusive or obstreperous conduct is a corollary of the advocate’s right to speak on behalf of litigants. A lawyer may stand firm against abuse by a judge but should avoid reciprocation; the judge’s default is no justification for similar dereliction by an advocate. An advocate can present the cause, protect the record for subsequent review and preserve professional integrity by patient firmness no less effectively than by belligerence or theatrics.”

Respect for the court is also covered in the ABA Standards for Criminal Justice. Standard 3-5.2 (prosecution standards) and 4-7.1 (defense standards) state that as officers of the court, lawyers should “support the authority of the court and the dignity of the trial courtroom by strict adherence to codes of professionalism and by manifesting a professional attitude toward the judge.”

The Commentary for both of these sections cites the United States Supreme Court in explaining that lawyers are permitted to argue their respective positions, but in the face of an adverse ruling by the court, a lawyer may not resist the ruling or insult the court, his or her only remedy is to preserve the issue for appeal. [Citing Sacher v. United States (1952) 343 U.S. 1, 9.]

Conclusion

While lawyers can and should vigorously represent their clients in court, they are not permitted to do so at the expense of disobeying or disrespecting the court. Knowledge of the applicable ethical and legal rules governing the proper relationships between lawyers and judges will permit the savvy lawyer to maintain the interests and reputation of their clients, as well as themselves.

Disclaimer: the information in this column is intended to be informational only and does not constitute legal advice. Please shepardize all case law before using.

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