



Ryan E. Davis, Esq.

Professionalism: To the Obscene – Remarks by Ryan E. Davis Upon Receiving the 2012 Lawrence G. Mathews, Jr. Young Lawyers Professionalism Award

When I received the call from Tom Zehnder that I was this year's recipient of the Lawrence G. Mathews, Jr. Professionalism Award, I was honored and humbled. Knowing and very much respecting all of the past recipients, I felt privileged to be considered among their ranks. Naturally, I shared the good news with the first person that walked into my office, my assistant. Clearly impressed, her immediate response was, "Huh, you're still a young lawyer?" Thanks, Toni!

Tackling a topic such as professionalism is a daunting task. How does one define it, or even describe it? Is the concept limited to the workplace, or does it, or should it, extend into life outside of the office as well? (It does.)

For assistance, I turned to the trusty *Merriam-Webster* online dictionary, which defines professionalism as follows:

The conduct, aims, or qualities that characterize or mark a profession or a professional person.

Although quite accurate, the definition was not of much help. After all, what are those aims, qualities and types of conduct? I then realized that the Supreme Court of the United States had already articulated the best description of professionalism in a 1964 opinion, *Jacobellis v. Ohio*, 378 U.S. 184 (1964). In that case, the Supreme Court also struggled with a definition.

Ultimately, Justice Stewart wrote:

I shall not today attempt further to define the kinds of material I understand to be embraced within that shorthand description and perhaps I could never succeed in intelligently doing so. But I know it when I see it.

Ironically, as we all know, Justice Stewart was describing obscenity when he penned those words. But the same words apply to the concept of professionalism. It is difficult to define, but we all know it when we see it. Professionalism can definitely be seen in new attorneys, like members of our YLS, who are beacons of professionalism – dedicated, enthusiastic, deferential and idealistic. While our "big bar" has no shortage of attorneys who exude the attributes of professionalism, it can be a challenge to maintain that commitment to professionalism in the wake of escalating pressures.

Indeed, increasing workloads, combative opposing attorneys and mounting financial demands

can chip away at even the most professional among us. I can't offer any solutions, but I can offer a story my high school English teacher, Dr. Walton, shared with our class my senior year, before we departed for college. She had a somewhat sheltered, wholesome upbringing and barely knew, much less uttered, any four-letter words. Then, she went off to college. She was away from her family and childhood friends for the first time. That Christmas she returned a different person.

Her vocabulary had expanded and her language had become, well, much more colorful. The change was gradual and completely unbeknownst to her – until she returned home and her friends and family informed her how shocked they were with what she had "learned" in college.

I mention this story because professionalism, and in turn one's most valuable asset – his or her reputation – can erode, much like my high school teacher's once pristine language, unless professionalism is made a priority – unless it is an objective in and of itself. Without a commitment to professionalism, the number of hours billed can become more important than the quality of those hours. Email discussions can more frequently descend into email wars, and having the last word can become more important than maintaining one's reputation. While achieving a zen-like state of pure professionalism, where emotion never overtakes the moment, may not be possible (well, at least not in litigation), every encounter with opposing counsel, your clients, your colleagues or the court is a new opportunity to build your reputation and to allow others to see glimpses of professionalism in you.

One practical and fulfilling way to maintain a commitment to professionalism is through mentorship. Having a mentor, and then later becoming one, can help instill, maintain and bolster professionalism. The YLS, through the leadership of Christopher Kest, now boasts one of the few attorney-law school mentoring programs in the country. This program has proven to be as rewarding for the YLS mentors as it is for the law student mentees.

I never knew the man for whom the young lawyer's professionalism award was named, but I have every reason to believe that he was an incredible mentor. I've had the good fortune of being partners with one of Mr. Mathews' former partners,

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Frank Bedell. In talking with Frank, I've learned that Mr. Mathews believed that no case or client was more important than your reputation and that the practice of law is a privilege, not a right. Words to live by.

I have been fortunate to have had some great mentors at Winderweede, Haines, Ward & Woodman, P.A., including Brad Saxton and Jeff Deery, among others. In fact, I consider this award as much a tribute to them as it is to me.

Brad has always encouraged me to pick up the phone or, better yet, meet in person rather than rely upon email, especially in important or delicate situations. That advice has proved invaluable. A simple phone call, rather than an email in which the tone or intent can be misconstrued, can often smooth over a situation that would otherwise be fraught with angst.

I recall a fairly recent situation where I had asked opposing counsel for an extension to answer or otherwise respond to a complaint. The opposing counsel consented to an extension to answer but not otherwise respond. It was a complex matter and I had just been retained a day or two prior to the response date, so I, rightfully or wrongfully, was a little frustrated. Rather than responding by email and raising an issue about it, I decided to pick up the phone. As it turns out, we simply had a misunderstanding, and the opposing

counsel was not in any way attempting to limit my response. He interpreted "otherwise respond" to mean an informal response, which was not my intent, rather than a pleading or motion to be filed with the court. By making the phone call, I was able to resolve the issue quickly and maintain a good working relationship with opposing counsel.

Professionalism is no longer just an ideal, but is actually required of new attorneys – and should be required, or at least expected, of all attorneys. In September of last year the Supreme Court revised the Oath of Admissions by adding the following:

To opposing parties and their counsel, I pledge fairness, integrity, and civility, not only in court, but also in all written and oral communications.

The oath now mandates civility, or a certain level of decency when attorneys interact with opposing counsel. Civility is not inconsistent with zealous advocacy; it just keeps the advocacy from becoming personal.

Although professionalism can be hard to define or to describe succinctly, by committing to it and making it a priority in your practice, others will certainly know and understand professionalism when they see you.

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examined the roles of lawyers and judges in the justice system and experiences from the bench exemplifying the need for fair and impartial courts. Citizen involvement through participation on juries, voting and speaking out when the courts are criticized for doing what they were created to do were talked about as well.

Feedback from the program was phenomenal. One teacher wrote:

Thank you for an excellent American government presentation last night. It was extremely informative, useful and beneficial to an Orange County educator of social studies. The

presenter was excellent. The lawyers were very helpful and the judges were very informative, insightful and fascinating. I could have listened to them all evening long. I would be honored to be on their jury.

Many thanks go out to Judges Allen, Davis, Plogstedt, Lauten, LeBlanc and Martinez for their invaluable participation, as well as OCBA board members Jessica Hew and Meena Hirani for their assistance with the group discussion.

Thomas P. Wert, Esq., Roetzel & Andress, LPA, is a past president of the OCBA. He has been a member of the OCBA since 1974.

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