

N. C. Lawyers and Professionalism
A Lawyer Walks Into A CLE...

Neither Mark Twain, Abraham Lincoln nor Learned Hand have appeared at any of North Carolina's professionalism CLEs in the last twelve years; however, equally fine humorists, public servants and legal philosophers have. In North Carolina, you have had the opportunity to hear the humor of Lawson Newton, the poetry of former Chief Justice Henry Frye, and the legal philosophies of Tom Lunsford, Janet Ward Black and Buddy Wester, to name but a few. The North Carolina Chief Justice's Commission on Professionalism (CJCP) is now twelve years old, and during that time, I have had the pleasure and privilege of hearing many wonderful professionalism presentations. Below are some of the most memorable nuggets throughout the years, as I recall them.

1. To all new lawyers – **find a mentor!** The law gets more specialized and complex with the addition of each new generation of lawyers. In our present economy, more and more new lawyers are opening their own offices with little or no experience. The first time they engage in any form of legal work, it can be overwhelming. What to an older more experienced lawyer may seem elementary, to a new lawyer, it can be complex and confusing. If there is a new lawyer in your town, introduce yourself and offer to help as a mentor. However, as Ellen Gregg and Heather Mallard have told us, there are now four different generations of lawyers in the work place. Work hard to understand the differences in generations and cultivate those differences to make us stronger as a profession. Start by sharing lunch and a good war story; it will make you feel better about what we do.
2. Always remember the importance of a **handshake!** Criminal Defense attorney Eben Rawls and Prosecutor Barry Cook were involved in a very inflammatory case involving the kidnapping and rape of a young lady, taken from her church on Easter morning and left for dead in a wooded area. After much pretrial publicity and great emotion, the lawyers agreed to try the case as professionally as they could with an agreement to treat everyone involved civilly. When the case was called, the prosecuting witness and her family came forward with embarrassment and hatred in their eyes for the defendant and his attorney. When Barry Cook came in, he walked over and shook Eben Rawls' hand, sending the message to all watching that capable lawyers were acting as honorable and zealous advocates who would be seeking justice. A **handshake** at the end of a legal matter reaffirms the important message that we can disagree without being disagreeable.
3. Former Chief Justice Burley Mitchell, who created the CJCP with the assistance of Bill King and Jerry Parnell, admonishes lawyers to learn, review and adhere to the Rules of Professional Responsibility. Even though our citizenry does not want to "rat" on anyone or get involved in "other people's business," our Rules sometimes require that we do so. Chief Justice Mitchell cautions that if we are to continue to be a self-regulating profession, there are certain requirements that apply to each of us. If

we are not willing to follow the mandates of Rule 8.3 – Reporting Professional Misconduct, there are other organizations that are willing to take over that obligation.

4. “Don’t Drink Coffee with Your Client” is a well-known presentation by Roger Smith that highlights the relationship between a lawyer and his or her client. If you get the chance, do not pass up the opportunity to hear this outstanding presentation, which highlights many aspects of professionalism. My interpretation of this speech is that we need to establish a professional relationship with our clients (Rule 1.2 of the Rules of Professional Conduct), and if that relationship becomes more of a friendship, it becomes harder to act as the lawyer.
5. Avoid seeking a Default Judgment or asking for Sanctions against another lawyer if you can do so without prejudicing your client. Do what Ed Gaskins and other outstanding lawyers do: before filing motions that may adversely affect another lawyer’s practice or reputation, invite that lawyer to lunch or dinner to discuss the matter in person and try to resolve it without the assistance of the Court.
6. Jim Ferguson believes in the importance of treating all litigants with respect. He tells of a case in which the criminal defendant’s mother testified as his alibi witness and stated that the defendant was at home with her when there were several eye witnesses who saw the defendant leaving the scene of the crime with stolen items. In the first trial, the prosecutor abused the mother for a long period of time on cross-examination and so inflamed several jurors that they stated, upon entering the jury room for deliberations, “Can you believe how that DA treated the defendant’s mother?” The offended jurors would not vote for conviction even though it was clear that the defendant was guilty. After the mistrial, the prosecutor took a different approach in the second trial. The evidence for both sides was the same, but on cross examination of the mother, the DA simply asked, “Madam, the defendant is your only son, is he not?” She answered yes. “You love your son, don’t you?” She answered yes. “And you do not want him to go to prison, do you?” She answered no. “Thank you. No further questions.” When the jurors retired to the jury room this time, they started out by saying, “Can you believe that mother would lie for that boy like she did?” The jury returned a guilty verdict in about three minutes. Treat everyone in the legal system with respect.
7. Don’t always assume that your adversary is doing fine. If the opposing attorney is not acting like he or she normally does, there may be a problem. Tom White of Kinston tells a powerful story of an act of professionalism which occurred when he was a young lawyer in his first job. He started in a civil defense firm in Alabama and was mentored by an outstanding trial lawyer who went out of his way to make him feel welcome. His mentor went out of county to try a case against a very capable plaintiff’s lawyer, against whom he had tried many cases through the years. As the case progressed, everything seemed to be going the plaintiff’s way and Tom’s mentor was not objecting to anything, appearing to be confused. The plaintiff’s attorney then approached the Bench and asked the Trial Judge to declare a mistrial because he did not think the defense attorney was his usual self. It was later determined that the

defense attorney, Tom White's mentor, was in the early stages of Alzheimer's. What an act of professionalism! Remember that we have outstanding resources in the Lawyer Assistance Programs in North Carolina. The State Bar has PALS and FRIENDS, the Bar Association has BarCARES, and the CJCP has the Professionalism Support Initiative (PSI). If you know a lawyer who is struggling because of addiction, mental health problems, or unprofessional conduct, call one of the above referenced organizations for assistance.

8. Wade Smith has been winning cases and receiving accolades for his professionalism and civility since he first started practicing law. But Jim Blackburn tells a story about Wade that we can all learn from and admire. Jim was with the United States Attorney's Office, and he and Wade were on opposite sides in Federal Court. Jim used all of his preemptory challenges, and a juror was seated who would have been devastating to the prosecution. Jim tried to remove the juror For Cause, but the Judge denied the request. Jim knew that he had no chance with that juror. Wade, instead of just sitting and gloating over his good fortune, recognized that another lawyer was in trouble, and that if he did nothing, he would have an unfair advantage. Wade asked the Judge if he and Jim could approach the Bench and Wade then offered to give Jim one of his remaining challenges. The Judge allowed it and said it was one of the greatest acts of professionalism he had ever seen.
9. When you hear the words *Duke Lacrosse Case*, you probably do not think of professionalism. However, there were acts of professionalism in that case from which we all can learn. Tom Keith and the District Attorney's Conference contacted the District Attorney who was handling the case on many occasions to offer assistance and to suggest that he alter his course of conduct. This DA would not accept advice or consult with more experienced DAs who were willing to help him reevaluate the case. Joe Cheshire, Brad Bannon and many other fine defense attorneys in that case reminded us to believe in our clients, to not leave any stone unturned or piece of evidence unexamined, and to not let the sensationalism of the press overcome the presumption of innocence. Attorney General Roy Cooper was willing to step in and declare the Duke Lacrosse players innocent and dismiss all charges. Catherine Jean and Doug Brocker prosecuted the case on behalf of the State Bar in order to have the law license of this DA revoked. As difficult as the case was for all concerned, we can all be proud of the way our legal system allowed truth and justice to prevail in the end.
10. Remember basic professionalism concepts and core values that will benefit you and your clients:
 - Always take the high road - It is not always easy but will serve you well in the end.
 - No More Than 24 - Solve the number one complaint with the State Bar every year by returning each phone call within 24 hours. If you are in trial or out of town, have someone else in the firm return the call for you.
 - Treat every client as if he or she is the most important client in the office, no matter what type of case it is.

- Don't criticize judges and lawyers in front of clients – Clients will think they can do the same thing and it will make it easier to criticize you as well.
- Memorable judges and lawyers are the ones who either do it very well or very poorly – be in the group that does it very well.
- Place the goodwill of the profession and *pro bono* service above self-interest – Follow John McMillan's lead under Rule 6.1 and perform over 50 hours of *pro bono* service each year.
- First impressions are lasting impressions – Develop a reputation as a lawyer who knows the law and who does not try to bend the law to win at all costs.
- Be passionate about the legal profession and remember John W. Davis' quote about what we do as lawyers:

“True, we build no bridges. We raise no towers.
We construct no engines. We paint no pictures –
unless as amateurs for our own principal amusement.
There is little of all that we do which the eye of man
can see.
But we smooth out difficulties; we relieve stress;
We correct mistakes; we take up other men's burdens
and by our efforts we make possible the peaceful life
of men in a peaceful state.”

Thank you to Chief Justice Sarah Parker, and former chief justices Burley Mitchell, Henry Frye and Beverly Lake for their commitment to Professionalism and their continued support of the Chief Justice's Commission on Professionalism.