

WHY CHOOSE THE ROAD TO CIVILITY?

By John Tarantino



Yes, I've heard the saying, "Nice guys finish last." However, based on my experience, nice guys (and nice women) most often *finish first* in convincing juries. (And they usually sleep better at night, too.)

Then and Now. I started work at nine years old, shining shoes. Today, more than 40 years later, I practice law. My current job pays much better than my first one, and I have many more benefits in my present situation. There are definite differences in the two jobs, but they also have some similarities. They both require hard work, long hours, dedication to detail and the ability to communicate well with people. Once upon a time, as I shined shoes, I learned that my personality – as well as the quality of my work – could go a long way in determining my tip. Today, I have learned from years of trying cases that my personality – as well as my legal acumen – can go a long way in determining whether a jury accepts or rejects my arguments.

Then, I had customers. Now, I have clients. Then, I chatted up a storm to keep a customer's interest; and I learned to listen carefully to what the customers said as they judged both me and the quality of the shine I applied to their shoes. Now, I talk to jurors in language that I hope will convince them to vote in favor of my clients; and I listen carefully to the answers that I receive in *voir dire* and to the more subtle responses that I get from the jurors' body language as they judge me as well as everyone and everything they hear at trial.

I learned early on in my career as a shoe shine boy that my customers liked me because I was genuinely interested not only in doing a good job shining shoes, but also in getting to know each of them. My personality then is my personality now: I was, and still am, genuinely interested in getting to know the persons I meet. I want to understand how and why they hold certain views. I also want an opportunity to get my views across, perhaps to shape their opinions in the process. I've always enjoyed the challenge of convincing others; and I try to do so in a respectful and civil manner.

I was not shy about expressing my views. That hasn't changed. Today, I am paid to talk, to express views, to challenge, to debate, and ultimately to persuade judges and juries. I am good at my job. Sometimes, when everything goes right, I can even excel at what I am doing. However, at other times, I fail – no doubt about it. I've learned that failure is the price of being a trial lawyer. In all honesty, it is a price that I gladly pay for being a trial lawyer. That's because the successes outshine the failures, and the highs trump the lows.

Accomplishing the Unobtainable. Understand this: in many ways, trial lawyers are constantly being called upon to do something that we cannot do. We are asked to accomplish what is often unattainable: we are asked to obtain ultimate justice. In most cases, ultimate justice is something that must be left for another time, and perhaps for another place. However, we take an oath to honor, uphold and protect the Constitution. Not all lawyers are heroes. However, I know some lawyers who are undoubtedly one. They do extraordinary work for the poor, the disenfranchised and the downtrodden. They protect and fight for the rights of the unpopular, society's pariahs, and they do so in a professional, ethical manner. I also know many lawyers – and I am proud to count myself as one of them – who take their oaths seriously, seriously enough that we continue to do all that we can to honor our system of justice.

Nice Guys Don't Finish Last

For most of us, the road we travel each day is a non-glamorous, non-heroic one. In many ways we follow a pedestrian path; however, at times we must traverse rugged terrain as we approach the borders of justice. We meet many travelers on the journey: litigants, witnesses, opposing counsel, judges and juries. We must follow directions along the path, and work within a system of rules and procedures, all designed to deal with complex, and at times daunting, problems – the ones that fill today's courtrooms. In my travels, I have had the pleasure and the honor of meeting many fine lawyers, ones who care about their clients, who fight hard to win, and who do so in an honest, ethical and professional manner. I hope that I am viewed that way by my colleagues. On rare occasions, however, I meet other kinds of lawyers, ones who display a win-at-all-cost attitude, ones who seem more interested in obtaining a particular result than in getting to a result in the right way. These lawyers, though they may be portrayed by the media as today's courtroom gladiators, are, in my view, much fewer in number and much more limited in success than the public has been led to believe. Why is this my view? Because there is no need to act aggressively in order to be strong. There is no need to be mean or uncivil in order to be zealous. There is no need to be unnecessarily tough to be respected. And there certainly is never a need under any circumstances to be unethical in order to win.

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Civility Is Not A Weakness. Most of the lawyers I know who are extraordinarily successful are also genuinely nice persons. The fact that they are nice doesn't mean that they are pushovers. On the contrary, they are creative, courageous, and in many respects, fearless lawyers. Civility is not a weakness. It is a strength. I have never felt afraid to zealously advocate for my client's rights before any judge or any jury in any jurisdiction. I am proud of that fact. However, I am equally proud of the fact that I have been called a gentleman, a professional and a worthy opponent by colleagues, many of whom I have fought hard against in the courtroom.

The Great Trial Lawyers. In my experience, the great lawyer is almost always the civil and professional lawyer. The great lawyer today, as in years past, is also an ethical lawyer, one who wants to leave a legacy for the other great lawyers who will follow, a legacy of practicing law the right and honorable way. These great lawyers, these great men and women of competence, compassion and conscience, have been, and I hope always will be, our heroes. I know that they are mine. They not only have a place in today's courtrooms, theirs is a well-deserved place of honor.

Conclusion: Lessons Learned

As I mentioned at the beginning of this article, I once shined other men's shoes. That was my job. I never felt that I was demeaned by that job. I worked hard and I took pride in a job well done. Today, I work hard and I do my best to be a zealous, professional and ethical advocate for my clients. I strive to be civil at all times, even if my opponent chooses not to be civil. Why? It's simple: I expect no less from myself. My clients deserve no less from me. And the system of justice deserves no less from any of its participants.

I learned many lessons years ago when my job was shining shoes. One thing that I learned is that a nice shine on a bad pair of shoes will not make them any more comfortable. The shoes may look good, but they will still pinch. Through many years of trial practice, I have learned lessons too. One lesson is that even a polished lawyer, one with sparkling abilities, will dull his reputation and shame our justice system if he chooses to act uncivilly or unprofessionally. Why? Because in the end, a lawyer's success will never outshine his ethics.