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PROFESSIONAL RESPONSIBILITY: A VIEW FROM THE BENCH

*E. James Burke**

It is a pleasure and an honor to be here. I would like to join with the other speakers and thank Mr. Williams. His generosity and his focus on this series on professionalism and ethics is deeply appreciated by members of our profession. It is exciting and inspirational to be on the same program with Professor Burman and Leigh Anne Manlove. Every time I hear these two speak I am touched. They always make me proud of our profession. Routinely, their presentations strike a chord that goes to the heart of our profession—helping others. Today was no exception.

I was provided with relatively little direction when asked to be a part of this program. My topic is “The View from the Bench” and I find that I have way too much material to fit within the time constraints with which we are now working. Initially, I would like to follow up on the comments made by Leigh Anne and Professor Burman regarding pro bono work. Their presentations were excellent. As they spoke I noticed many law students nodding affirmatively. I have no doubt that all here recognize the importance of pro bono work. It is important for the clients, the attorneys and our profession.

I couldn't help but recall the story of the neighborhood dog and the psychology professor that Judge Tim Day described in an article for the *Wyoming Lawyer* when he was president of the Wyoming Bar Association. The professor did not have any pets of his own. He would frequently scold his neighbors who were disciplining their pets saying, “No, no, you should love the dog, not punish it.” Well, one hot summer day the professor was repairing his concrete driveway. After a full day's work he dropped his trowel, wiped the sweat off his brow and went into the house to have a nice cold lemonade. Out of the corner of his eye he saw one of the neighborhood dogs about to walk onto the freshly laid cement. Rushing outside, the professor ran over to the dog and was about to hit him when a neighbor leaned out of the window and said, “Ah, professor, remember, you should love the

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dog and not punish it.” The professor paused and then replied, “I do love this dog. But in the abstract, not in the concrete.”

There is an abstract quality to this concept of pro bono work as it has been discussed here today. Perhaps a little dose of reality is appropriate.

This is a wonderful, but very demanding profession. It is difficult to become a lawyer. Law school is difficult and expensive. For those of you in the audience who are not lawyers or law students, law school takes three years. After graduation, you have to pass a bar exam in order to be licensed to practice law. The bar exam experience is excruciating. There is so much pressure. You have to find a job and earn a living at that job. You will have to pay off those law school debts. You’ll probably get married and have children. You want a nice home and good opportunities for your family. You have to get clients. You must be productive and meet the earning requirements of your law firm. You need to make time to attend your children’s activities, and be a good spouse. You would like to take an occasional vacation, but it eats into your productive time and might impact your financial productivity. You must fulfill CLE requirements.

Now, you have people like Professor Burman and Leigh Anne Manlove saying you have to do more. You must dedicate at least 50 hours a year to pro bono work. Well, that doesn’t sound like much in the “abstract” but it can be very difficult in the “concrete.” Which client do you ignore? Which child activity do you fail to attend? Which income do you give up?

So what’s my point?

My point is this. A commitment to pro bono work sounds nice in theory, but the commitment will become reality only if it is a focus of your attention. Unless you force it to happen, it won’t. There are many other demands competing for your attention. If you properly focus, you’ll find abundant opportunities to do your part. If you’re looking for direction, I’m sure Leigh Anne and Professor Burman will be happy to make suggestions.

The reality is that members of our profession in Wyoming regularly make the commitment to pro bono service. As a district judge, I have had the opportunity to see that commitment in action on a regular basis. There is no doubt in my mind that there is a synergistic effect from that commitment that benefits the lawyers, their clients and our profession.

Those lawyers who do their part have a better chance of experiencing a sense of fulfillment and satisfaction during the course of their career. Their efforts will be noticed and respected by the courts and by their colleagues.

That respect is likely to translate into increased business and success for those attorneys. Those lawyers who give of themselves by performing pro bono services will ultimately receive much more than they provide.

Since my assigned topic is “The View from the Bench,” perhaps I should mention a few things that I have noticed.

1. Judges want to do the right thing, but they need help. No judge can know all the law on every subject. You must not assume that they know the law that supports your view of the case. It is your fault if you don’t provide it to the judge. There are hundreds of cases and lawyers competing for the judge’s attention. If you make it easy for the judge to understand the legal basis of your position, you increase your chance of success for your client.

2. Integrity counts. Your reputation matters. How you handle yourself in one case will impact the judge’s perception of you and your credibility in other cases. When you start in practice you will be given the benefit of the doubt. If you stumble, it will be very difficult to regain your footing. Always take the high road.

3. You’re the lawyer. You must make the decision as to what evidence and argument to present that will benefit your client. One example that comes to mind relates to cumulative evidence. We see case after case when numerous witnesses are called, all of whom say the same thing, e.g., “Mr. Smith is a very good father.” The client can’t get enough of those witnesses. The court can. Remember your case isn’t the only one on the court’s docket. Don’t waste the court’s time pounding away with the same evidence. It is not effective advocacy.

4. Incivility doesn’t work. Don’t confuse “zealous representation” with anger, lack of courtesy, or meanness. None help your client. If you’re on the receiving end of that conduct, handle it with class and dignity. The court will notice.

5. Seek help. Throughout my career, I’ve routinely sought help from more experienced lawyers. As a judge, I rely heavily on the advice and experience of other judges. I’d encourage you to do the same. You’ll find Wyoming attorneys easily accessible. They’ll feel complimented that you sought their advice. Use their experience to help you do a better job for your client.

As a final note regarding my “view from the bench,” I must comment upon the caliber of representation that I see on a daily basis. I continue to be impressed with the competency, caring and professionalism evidenced every day by Wyoming attorneys. Wyoming is a wonderful place to practice law.

