

Civility Issue*

Can Criminal Lawyers be Civil?

There is a lot of hand wringing going on about the state of lawyer civility. I have mixed feelings about this issue.

I was raised to have good manners. I try to display those manners at work and during social occasions. I respect politeness in others.

However, there is also a national trend toward muzzling unpopular views under the guise of seeking politeness. The proponents of this trend complain when others espouse views they disagree with, or when others raise questions they do not wish to discuss. Because those views and questions make them uncomfortable, they believe it is impolite for others to air their ideas before an unwilling audience.

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___*Tact consists in knowing how far to go too far. Jean Cocteau.

Persons should not be subject to speech that demeans them as individuals, or as a member of a group or race. Racism and sexism are unacceptable. However, it is very different to deny persons the ability to discuss a contentious issue, simply because some may consider the subject unsuitable for conversation.

As lawyers, we always face these situations. Everyone has asked a question to which a court has sustained an objection merely because the subject matter appeared controversial. Try starting a line of questioning about a witness' potential for bias, and judges will often try to limit cross examination.

When a lawyer is attempting to pursue a legitimate line of questioning or argument, this can be very frustrating. However, I have found that lawyers who establish themselves as well mannered and trustworthy, are given more leeway when approaching areas that might be considered controversial.

This type of civility does not include backing away from conflict. It does mean showing

respect to the court and the other actors in the courtroom.

Appear in court on time. Address all concerned in a courteous manner. Argue your points with vigor, but quietly accept the outcome. Accurately represent the law and the facts. Abstain from personal attacks.

The lawyers who do this regularly, can afford to ask the court's indulgence when they are going to ask uncomfortable questions or present novel defenses. The lawyers who do not, will never reach that level of trust.

Reversible Errors

United States v. Grigsby,
111 F.3d 806 (11th Cir. 1997)
(Importation of prohibited wildlife products fell under exceptions to statute).

Anderson v. Singletary,
111 F.3d 801 (11th Cir. 1997)
(Prison Litigation Reform Act does not require a filing fee in habeas cases).

United States v. Cooper,
111 F.3d 845 (11th Cir. 1997)
(Firearm that was not possessed at the site of drug offense did not justify 2-level

enhancement).

Thompson v. United States, 111 F.3d 109 (11th Cir. 1997) (Failure to admonish a defendant about right to appeal was per se error).

United States v. Carter, 110 F.3d 759 (11th Cir. 1997) (The court abused its discretion in denying a motion for a reduction of a sentence over weight of wet marijuana).

United States v. Milledge, 109 F.3d 312 (6th Cir. 1997) (Evidence did not justify drug quantity finding).

United States v. Bradfield, 113 F.3d 515 (5th Cir. 1997) (The court failed to give a jury instruction on entrapment).

United States v. Rodgers, 109 F.3d 1138 (6th Cir. 1997) (If a court allows a jury to review trial testimony, there must be a cautionary instruction not to place upon it undue emphasis).

United States v. Saldana, 109 F.3d 100 (1st Cir. 1997) (A defendant has a jurisdictional basis to appeal a denial of a downward departure).

Terry v. Potter, 111 F.3d 454 (6th Cir. 1997) (When a defendant is charged in two alternate manners, and the jury reaches a verdict as to only one, there is an implied acquittal on the other offense to which jeopardy bars retrial).

United States v. Clark, 110 F.3d 15 (6th Cir. 1997)

(Safety Valve applies to cases that were on appeal at effective date).

United States v. Hodges, 110 F.3d 250 (5th Cir. 1997) (Fine was not justified for a defendant with a negative net worth).

United States v. Hall, 110 F.3d 1155 (5th Cir. 1997) (A gun, found near the defendant and a large cache of drugs, was not carried).

United States v. Amlani, 111 F.3d 705 (9th Cir. 1997) (A prosecutor's repeated disparagement of an attorney in front of his client, denied the defendant his right to chosen counsel).

In Re Grand Jury, 111 F.3d 1083 (3d Cir. 1997) (The government may not seek disclosure of phone conversations that were illegally recorded by a third party).

United States v. Miller, 111 F.3d 747 (10th Cir. 1997) (The court refused a jury instruction on venue in a multi district conspiracy case).

United States v. Amaya, 111 F.3d 386 (5th Cir. 1997) (The defendant's plea was involuntary when the court promised to ensure a downward departure for cooperation).

Williamson v. Ward, 110 F.3d 1508 (10th Cir. 1997) (Failure to investigate the defendant's mental illness was ineffective assistance of counsel).

Miles v. Stainer, 108 F.3d 1109 (9th Cir. 1997) (Defendant who failed to take psychotropic drugs within two weeks of plea may not have been competent).

United States v. Morales, 108 F.3d 1031 (9th Cir. 1997) (The court should not have excluded a defense expert on bookkeeping).

United States v. Paul, 110 F.3d 869 (2d Cir. 1997) (The court failed to give duress instruction in a felon in possession case).

Pearson v. James, 105 F.3d 828 (2d Cir. 1997) (Closure of courtroom denied the right to a public trial).

United States v. Porotsky, 105 F.3d 69 (2d Cir. 1997) (The court did not make findings sufficient to deny travel request).

United States v. Carrozzella, 105 F.3d 796 (2d Cir. 1997) (An enhancement for violation of a judicial order does not apply to every perceived abuse of judicial process).

Richards v. Wisconsin, 117 S.Ct. 1416 (1997) (There is no blanket drug exception to the knock and announce requirement).

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