

# PRO HUMANITATE IN THE LEGAL PROFESSION

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## INTRODUCTION

Thank you so much for that kind introduction. I am thrilled to be back at Wake Forest today and I am honored to speak at this Law Review Symposium. It is wonderful to be part of such an esteemed tradition, where we can collaborate, meaningfully explore a variety of legal issues, and hopefully provide and receive mentorship in the practice of law.

While I have always been a proud alumna of Wake Forest University, I have become increasingly involved with Wake Forest Law School in recent years thanks to Professor Abby Perdue and her work with the Wake Washington summer internship program. In fact, I see several of my past and future interns in the crowd here today.

This morning, after listening to the opening session and spending time with you at breakfast, I went over to the undergraduate side of campus and spent time with students discussing separation of

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powers, law, and careers. It was invigorating and great to be back on campus.

It has been twenty-seven years since I graduated from Wake Forest University. Stepping back on campus, it feels as though no time has passed, and my pride in being a Demon Deacon endures. One memory that sticks with every Deac long after graduation, whether a graduate of the university, law school, medical school, or business school, is the school's motto: *Pro Humanitate*. It is everywhere around the campus—permanently engraved into the school's stonework—and *Pro Humanitate* underlies every aspect of the education all Deacs receive. As a fellow Deac, I am honored to offer my thoughts on how we, as present and future attorneys, can apply *Pro Humanitate* in the legal profession. Repeating the motto is easy, but living it in one's day-to-day life requires intention and purpose.

My remarks are primarily directed to the students in the room, though they are equally applicable to attorneys, professors, and others. For the students in the room, you may think, "I am just in law school—I haven't entered the legal profession yet. What does this have to do with me?" That sentiment is incorrect. Your journey in the legal profession began the moment you stepped foot on campus your 1L year. Two decades from now, you may end up standing where I am today. The path your career takes, and your level of satisfaction in this wonderful profession, will be impacted by your conduct at the inception of your legal career and every year following.

In preparing for today's address, I reviewed several articles about the meaning of *Pro Humanitate*. I was struck by convocation remarks given about a decade ago by James Powell, Wake Forest professor of classical languages, who eloquently wrote on the motto's meaning. He said, "The Wake Forest motto, *Pro Humanitate*, is regularly translated as 'For Humanity' and is probably most often understood to mean that we do what we do for the sake of humanity, for the people of the world. It is often heard as a very specific call to community service."<sup>1</sup>

Referencing the Roman term "humanitas," Professor Powell suggested a complementary meaning of *Pro Humanitate*: For Kindness, and for Human Cultivation and Learning.<sup>2</sup> With this definition, Professor Powell posited that we can better serve and uplift humanity by acting with kindness and continually striving to educate ourselves.<sup>3</sup> I find this interpretation of the motto compelling, especially as applied to the legal profession. Indeed, humanity, or *humanitate*, is synonymous with human civilization, which integrally relies upon the rule of law.

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1. James Powell, *The Meaning of a Motto*, WAKE FOREST MAG. (Jan. 27, 2012), <https://magazine.wfu.edu/2012/01/27/the-meaning-of-a-motto/>.

2. *Id.*

3. *Id.*

Our nation's attorneys are the front-line defenders of the rule of law in the United States and serve as the caretakers and guardians of our constitutional system. When attorneys, law professors, or judges act unethically, uncivilly, unprofessionally, or in a manner detached from their community and "humanity," our system of laws suffers. When legal professionals instead act in the opposite manner, with integrity and with civility, our profession, system of government, and democracy are bolstered. In this way, civility and the ethical practice of law are at the heart of what *Pro Humanitate* encompasses.

Of course, talking about these concepts in the abstract is easy. Applying them to your professional life is the challenge. Practicing law can be trying at times, and incorporating *Pro Humanitate* requires deliberateness and diligence. At minimum, the successful practice of law requires thoughtfulness, action, and intention in three areas: civility, ethics, and public service. Today, I will address each of these three foundational ideals in our legal profession. Hopefully, if I am sufficiently persuasive, my remarks will instill in each of you the motivation to pursue your legal career with *Pro Humanitate* at front of mind.

## I. CIVILITY

I will begin by addressing a trait that is, unfortunately, becoming increasingly rare in our profession: civility. Prior to taking the bench, I enjoyed being an attorney and advocate. I still enjoy the law as I continue to grow and learn in the legal profession as a judge. I have had the great fortune to work with wonderful mentors throughout my career, many of whom emphasized the long-term benefits of civility. As legal professionals, civility not only benefits us on a case-by-case basis, but it also benefits our lasting professional reputations and garners great personal satisfaction. When you look around the legal community, those of us who are passionate about the law and our profession enjoy interacting with fellow lawyers, no matter which side of the case caption we may fall. We thrive when we have a reputation of excellence and are considered by our colleagues as credible, responsible, professional, and civil.

At a macro level, civility impacts our ability to live, and how we live, in a free society. Treating others with dignity strengthens communal bonds and acts as a bulwark against oppressive government interference in our lives. Continuing to live in a free society in this great country requires that we treat people with respect and with dignity. I will say it again—as citizens, and especially as caretakers of our legal system, we must treat people with respect and dignity. The better we treat each other, the stronger our democracy will be, the stronger our community will be, the stronger our legal profession will be, and, crucially, the more satisfied *you* will be in our profession.

Civility is a broad topic, so I plan to focus my remarks on two perspectives. My career has been defined by my love of litigation, both as a litigator and as an adjudicator, so I will begin with a discussion of civility in the courtroom and with adversaries. Next, I will discuss the need to enhance civil discourse through open discussion and a welcoming stance toward diversity of thought.

#### A. *Civility in the Courtroom*

As lawyers and law students, we consistently hear about the importance of “zealous” representation and advocacy. Whether in a mandatory Professional Responsibility class or in preparation for the MPRE to join the bar, the need to work on behalf of your clients fully and passionately is a foundational notion drilled into our heads as students.

In federal courts today, where litigation is expensive, there are often millions, if not billions, of dollars at stake. In the United States Court of Federal Claims, for example, it is not uncommon to have contractual or patent claims worth well over several billion dollars. I have many on my docket right now. When that kind of “bet the company” litigation occurs, it can be easy for zealous representation to morph into a scorched-earth strategy or for emotion to supersede sound legal argument. In my experience as a judge who presides over such cases, I have observed that civility is most likely to disappear in the high-stakes cases. I have observed incivility in briefing, in emails between the parties, and in the courtroom. While not yet pervasive, it is concerning.

You may ask what a judge knows about the practical realities of law practice—and it is a fair question. Before joining the bench, I served as a litigator and advisor for twenty years, both as a law firm partner and as an attorney in the United States House of Representatives and in the White House. I have worked on high-pressure matters and represented clients that one would respectfully call “pushy.” I have advised high-ranking public officials to help them make weighty decisions on a brief timeline. I have been in the trenches of contentious discovery fights and depositions. I put personal life aside to meet short deadlines in cases, and I have been fully entrenched in years-long litigation matters. I have seen firsthand how a lack of civility can hurt not only a lawyer or his client, but also the profession.

A tough or unrelenting demeanor is often touted as being an asset in our profession. However, there is a difference between advancing legal arguments in a zealous manner to benefit your client and acting uncivilly. I propose to you that you can be a zealous advocate who strives to win *and* act in a civil and professional manner worthy of Wake Forest’s *Pro Humanitate* motto. It is not a weakness to be kind, fair, and respectful, while still being an excellent advocate. Far from being a liability, civility as a practitioner has real benefits.

*First*, civility keeps the court's attention on your arguments. When you act in an unprofessional manner—whether towards your adversary or even towards your colleagues—in a way that is visible to the court, it becomes a distraction. A good lawyer, acting ethically and professionally, lets the argument speak for itself. Your legal argument should be the star, not you or opposing counsel.

*Second*, behaving uncivilly is an emotional drain. Law school may keep you busy now, but practicing as a lawyer will keep you just as busy, if not busier. There is no need to act in a way that invites extra, unneeded stress into your life. Professionalism will often save you time and hassle, which will also save your client money. Furthermore, a judge appreciates when counsel can resolve disputes without filing unnecessary motions.

*Third*, civility builds credibility. Acting with civility conveys that you feel confident in your legal arguments. It also demonstrates respect not just for the court and your opponent, but also for the practice of law.

With that being said, I offer a few practical tips to keep in mind when you are mired in a stressful or contentious matter, and the pursuit of civility feels more challenging.

One of the best pieces of advice I have received on this topic came from the judge for whom I clerked, Judge William H. Pauley III of the United States District Court for the Southern District of New York: Always respond, never react. I cannot emphasize this maxim enough. In every interaction, act as if what you say will be made publicly available, as transcripts and email exchanges are often put before the court as exhibits. The degree of incivility often portrayed in these exchanges is one of the more surprising, and disappointing, things I see as a judge. A rude response to opposing counsel may initially feel satisfying, but it often reflects poorly on the sender when the email inevitably appears in briefing. Acting with civility keeps you in control of your emotions and helps ensure your filings actually aid the court. Judges and opposing counsel have long memories about poor behavior. Your reputation is incredibly vital to your ability to thrive in the legal profession—protect it, guard it, and practice law in a manner that builds it.

This tip—practicing mindfulness to respond, not react—is of use not just in your filings, but also in your conduct at depositions. As lawyers, we must work with the facts we are dealt. By asking leading questions or otherwise treating opposing counsel poorly, without dignity and respect, we can change the nature of the evidence that enters a case. Doing so is inappropriate and is damaging to our legal profession. Do not insert yourself into the litigation—use the skills you have acquired to persuade based on the facts you have inherited.

My second piece of advice is to refrain from “crying wolf.” Civility entails bringing matters before a court that have merit, regardless of what your client may be pushing you to do. Sometimes you must advise a client to take a different tack, and this is often a difficult

conversation to have. However, bringing meritless motions before a court diminishes trust between parties and can damage trust between you and the court.

Finally, I want to remind you that it is a small bar, and there is a social accountability in the legal profession. An opposing counsel today could be a co-counsel in a few years. If you would like to be a judge, or a general counsel of a government agency one day, I assure you, your background check will go back to the beginning of your law practice. Do not needlessly burn bridges or establish a reputation as a difficult or unethical litigator. Your character will open and close doors for you.

My goal here is not to disconcert you—the practice of law is fun and interesting. Indeed, the legal profession is one of the great remaining *professions* in our country. I use the term “profession,” and not the term “business,” intentionally. Lawyers are the caretakers of our legal system, and civility is a fundamental aspect of that crucial role. So, I urge you to be mindful of civility in your life and in your practice. It will lift you up and lifts us all up as a profession.

### B. *Civil Discourse*

Of course, we cannot limit civility to just the courtroom. To live by the tenets of *Pro Humanitate*, and to work towards the flourishing humanity that Wake Forest’s motto envisions, we must embrace a civil discourse.

Diversity of experience and opinion are vital to making advances, both technological and societal. However, we can only benefit from that diversity if people are allowed to share their perspectives and we are receptive to hearing others’ perspectives. Indeed, listening to others’ viewpoints is just as important, if not more so, than sharing your own. As Justice Antonin Scalia has noted, “More important than your obligation to follow your conscience, or at least prior to it, is your obligation to form your conscience correctly.”<sup>4</sup> You cannot form your conscience or opinions in a meaningful way without educating yourself and being part of an academic community that values free speech and diversity of viewpoints.

To paraphrase Justice Scalia’s colleague and friend, Justice Ruth Bader Ginsburg, to win someone over to your perspective in the law, you must persuade others to adopt your position. I agree with her that “reacting in anger or annoyance will not advance one’s ability to persuade.”<sup>5</sup> Persuading does not mean shaming, cancelling, or

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4. Antonin Scalia, Commencement Address at Langley High School, McLean, Virginia (June 17, 2010).

5. Ruth Bader Ginsburg, Opinion, *Ruth Bader Ginsburg’s Advice for Living*, N.Y. TIMES (Oct. 1, 2016), <https://www.nytimes.com/2016/10/02/opinion/sunday/ruth-bader-ginsburgs-advice-for-living.html>.

otherwise engaging in uncivil behavior, either in person, in briefs, or online.

Instead, I urge you to listen—try to understand the opposite side to your position and where that person or courtroom adversary is coming from. You will be that much more effective in persuading an opponent in a debate, a judge in a courtroom, or a member of the public to adopt your position if you can address or contrast their ideas in a meaningful, substantive way. To do so as a lawyer means you can better fulfill your role as an advocate, advance civil public discourse, and thus live up to the ideals of *Pro Humanitate*.

If I leave you with anything on this topic, it is that humanity encapsulates more than just one person's worldview or perspective. It is important to acknowledge, listen to, and learn from diverse viewpoints, both as a student and as a practicing lawyer. I encourage you to act with intention to ensure you are exposed to and understand opposing viewpoints so that you may factor such ideas into your own decision-making.

## II. ETHICS

I will next turn to the importance of acting in an ethical manner in your law practice. While civility reflects how one behaves publicly, ethics is more internal. Though there is significant overlap with my discussion of civility, I think it is important to highlight a few key differences.

Ethics are at the heart of what *Pro Humanitate* expects and encompasses. Our society's rule of law and our professional ethics are tied together. People expect lawyers and judges to represent what the law is. Indeed, there is a valid expectation that judges “call balls and strikes” in the cases before them, putting aside their own personal views or biases. Such a view reinforces attorneys' roles as caretakers of our legal system, our constitution, and our profession. Acting in an unethical manner chips away at the public confidence in our most vital institutions, and reversing that damage can seem nearly impossible.

As with “civility,” ethical behavior can have important effects on your own life and career. Ethics define who you are and how you will be viewed by those around you. Memories are long, and few people forget a serious ethical lapse. If you cut corners, if you take the easy way out, if you look out only for yourself and fail to keep “humanitate” or humanity in mind, you may soon find that your reputation will suffer, likely irreparably.

Ethics are also essential to leadership. Treating colleagues with respect and acting in an ethical manner leads to a productive and collaborative team rather than one cabined and competitive in a damaging way. There are tomes written about ethics being the “heart

of leadership,”<sup>6</sup> and I will not repeat those points here—that is a whole semester’s worth of material. Those works make clear a few points worth highlighting. Leadership often concerns how a person responds to tough decisions, and you will face plenty in your career. One reason certain decisions are considered “tough” is that no matter how you decide the matter, you will inevitably disappoint or anger others. Living by high ethical standards will help you make the right choices and endure the inevitable criticism you will receive when others disagree with you.

If you end up making a mistake, that same ethical core will help you acknowledge the mistake and move on. Not only will your handling of the situation garner you respect, but others, including friends, colleagues, supervisors, and even judges, will likely know any error was unintentional due to your strong reputation for upholding high ethical standards.

The civil and ethical standards by which you live your life and practice law are enormously important. They are vital to you and your reputation, your clients, and to the profession. Attorneys, for better or worse, set a standard by which others follow.

### III. COMMUNITY & PUBLIC SERVICE

Finally, I turn to the more traditional definition of *Pro Humanitate*—“for humanity,” or having a commitment to community and public service.

In the legal field, most attorneys are not litigating high-profile Supreme Court or appellate cases. It is certainly easy, and often necessary, to focus our professional pursuits on the job opportunities that earn a high paycheck or bonus. This is a free market society, and it is well-accepted to leverage your skills as best you can. However, it is a mistake to practice in the legal profession under the assumption that one must make a binary choice between public interest and private sector work. Working in the private sector does not mean you have to, or should, abandon an interest in serving your society and community.

Opportunities to volunteer are all around us. One of the most simple and impactful options is to speak at your local library. I used to speak at the public library about intellectual property issues. If you enjoy teaching, consider working as an adjunct professor to help guide law students in their own careers—I did this for several years and enjoyed mentoring so many promising young lawyers.

For those who prefer not to return to the classroom after graduation, consider volunteering with your bar association or local court by joining the pro bono representation list. It can be daunting initially—you may be assigned a case on a topic you know nothing

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6. See, e.g., JOANNE B. CIULLA ET AL., *ETHICS, THE HEART OF LEADERSHIP* (Joanne B. Ciulla ed., 3d ed. 2014).

about. However, I assure you that if you study the topic and treat your pro bono client the same as you would your best-paying client, you will reap tremendous rewards. There is dignity and respect in doing so, and you will grow as a lawyer and benefit your profession.

I speak from experience, as some of my most rewarding pro bono matters occurred while I was in private practice in Charleston, South Carolina. I spent several years serving as a pro bono lawyer for Crisis Ministries in Charleston, assisting clients with their credit issues, child support disagreements, and housing concerns. I met with each client dressed professionally, timely arrived at each meeting well-prepared, and took each case seriously. Each year, I also prepared simple wills for firefighters, police officers, and other first responders. Was I a trusts and estates lawyer? No. Did I consult one and learn the topic? Yes. I knew my bounds, and accordingly provided advice and prepared wills in straightforward matters. Assisting those who supported my community was impactful on both a personal and professional level.

These matters and my pro bono cases in federal and state court were some of my favorite experiences. I did not volunteer with an end goal of courting paying clients or receiving accolades; I did it because I had the skill and time to do so, and I wanted my community to be a better place. Helping those in need of assistance not only boosts their dignity, but also lifts yourself and your profession. You will find that the clients who receive your excellent services, when provided respectfully, diligently, and at no cost, are grateful. By supporting such individuals, you are supporting your community. You are acting with *Pro Humanitate* in mind—bolstering our society.

Finally, I want to shift to public service. In the car ride from the airport yesterday, I spoke with two other panelists, both of whom had served in federal government positions. Our shared enthusiasm and love for public service was immediately evident. When attorneys engage in public service, as the three of us had opted in our careers, they have an opportunity to help shape government from within and participate in their community in a meaningful and novel way. If you have the financial means to take a public service position—even for a year—I encourage you to do so. Maybe that means clerking. Maybe that means going for a political appointment or becoming a prosecutor or city attorney. Although the pay is wanting, each of these jobs is competitive and difficult to get, and for good reason: these jobs are fun, interesting, challenging, and incredibly fulfilling. You are familiar with my background; I worked in law firms for the first twelve years of my career. I switched my career to focus on public service after paying off my student loans; I am glad I did so. While I value both my private and public sector experiences, I suspect I would not be in my current role as a federal judge had I not taken a chance and fallen in love with public service. I urge you to do the same if you can.

Yes—these kinds of public interest jobs reflect the most traditional meaning of *Pro Humanitate*. Yet, as you can see, public service is also closely linked with *Pro Humanitate*'s other meanings. Through public service, you benefit yourself and learn and grow. You also benefit your clients, your profession, your community, and our society through your dedicated, high-quality work. You demonstrate dignity and respect to others and build a better humanity through such work. And when you look back, I assure you that you will be proud of your pro bono or public service contributions, as much as any big case for a paying client, if not more so.

### CONCLUSION

Now, during law school, is the time to start thinking about how you would like to conduct yourself in your professional life and decide what kind of career you want. A reputation for good, ethical work, civility, and professionalism is invaluable. Remember to treat your colleagues and adversaries well, even when you may not be treated well in return. In my experience, you and your team will achieve more when there is a culture of genuine respect, value, and mentorship.

Using your skills to assist your community or to engage in public service—whether it be on a small or large scale, for credit or on an anonymous basis—is important to your happiness and is important to our profession and to society.

I have had great mentors who have treated me well. I have listened, I have learned, and I have changed my perspective and my thoughts about the law at times. All of this has made me a more confident and better lawyer. Because I built a strong reputation and had confidence in that reputation, I was able to take more chances to grab opportunities when presented, knowing that if I failed, I would likely still be okay. I wish this for each of you as your career progresses.

Perhaps walking this campus today, I have become reflective, and in that reflection, I have thought about the wonderful aspects of our esteemed profession. I have observed and experienced much change in the legal profession since the mid-1990s when I was last at Wake Forest. And despite what you may see on the internet—and it is a lot—I have personally seen great improvement in how lawyers treat each other. Perhaps pertinent to other discussions at this Symposium, one example is that our profession has made great strides in the treatment of women. Seeing these improvements, I am bullish on what *Pro Humanitate* has to offer in practice.

It may seem far off, but as the other presenters here today, and any of your professors or adjuncts in this room will tell you, your career and the formation of your reputation happens quickly. While you may be focused in the short term on your exams, or your summer job, you will be standing where I am, two decades into your career, in

no time. Just like me, you will walk this campus and feel only a blink of an eye has passed since your last class.

While short-term considerations can be important, I urge you to not lose sight of the long term. Be deliberate about what kind of attorney you want to be and put those thoughts into action—the time to exhibit and practice *Pro Humanitate* is now. Your satisfaction as a lawyer depends on it, and our legal profession and the rule of law truly depend upon it.

I hope I have been persuasive in this respect. Thank you for listening, and thank you again for inviting me to speak at this wonderful law school. It is truly an honor to be with you today. Thank you, and Go Deacs!