

Prof. Rizzardi:

Good morning everybody. I'm Professor Keith Rizzardi and it is my privilege to teach Professional Responsibility here at St. Thomas University, and also to begin our symposium today. I'd like to start by saying congratulations to our law review students, because I'm really proud of you for having the foresight, and the wisdom, and the maturity, to embrace this subject.

We're struggling at this time with professionalism and civility in our courtrooms and in our communities, and for you to be out in front of this issue is remarkable. We've got a great line up of speakers today, and it's my privilege to introduce the first one. Now, if you visit our St. Thomas University Law Review web page, you see this quote from John Adams, and it says, "Let us dare to read, to think, to speak, and to write," and our first speaker is somebody who adhered to Mr. Adams' advice.

He's a daring leader. He's a voracious reader. He's a deep constitutional thinker. He's a remarkable speaker in both the courtrooms and the classrooms, and he's a writer of numerous books about criminal law and our criminal justice system. A true professional, here to start our day on our professionalism, Dean Alfredo Garcia.

Dean Garcia:

I didn't know if you were talking about me. Thank you very much, and on behalf of St. Thomas University School of Law, I want to welcome all of you to this wonderful symposium. I would be remiss if I didn't start by thanking the members of the Law Review and the Editor-in-Chief, Bernie Guerra, who have done such a wonderful job of putting the symposium together.

This symposium issue will be dedicated to a special person who made wonderful and inimitable contributions to this law school, Murray Greenberg. I was fortunate to say that Murray Greenberg graced these hallways and inspired and gave his wisdom to so many students during his course of time here, as an adjunct here, at St. Thomas University School of Law.

So, I think it is appropriate and fitting that his two sons, who are here today, will be doing the foreword to this symposium issue. Ben and Jerry, if you would, stand up and be recognized. We have a wonderful program. I want to thank the Chief Judge Soto for being here today as well as Judge Wolfson, and Judge Rebull. Thank you for coming here and being part of this program.

Civility is a special issue, and professionalism is something that this school prides itself upon, and we try to weave it into the fabric of this law school, because it is important. Professionalism, after all, is what we strive to achieve on our daily, and in our profession, and in our lives so that is very important.

I wanted to start this program going to the core, the fundamentals. What is civility? In 2002, a book came out. It's entitled *Choosing Civility*. It is written by P. M. Forni, who is the co-founder of the Johns Hopkins Civility Project. He's a professor at Hopkins. And I picked it up, and he's got 25 rules of civility, but before he gets to those rules of civility, he defines the concept of civility.

And I think it's a concept that should underlie our daily lives, aside from civility in the profession. He says, and I quote, "Being civil means being constantly aware of others, and weaving restraint, respect, and consideration into the very fabric of this awareness. Civility is a form of goodness. It is gracious goodness."

He identifies the crisis in civility to a crisis in authority. And he says that the reason, perhaps we aren't as civil as we should be, is that the ethic of self-discipline has been replaced by an ethic of self-esteem. I guess we live in the age of the "selfie" after all, right?

So, I think that is very apropos that today we have these wonderful participants in this program, and we thank each and every one of them, including our keynote speaker, Paul Lipton for being here, and distilling their very important wisdom on this topic. And now it is my distinct honor and pleasure to introduce one of our own, of whom we are very proud, our 2010 graduate who will introduce our keynote speaker.

Armando Hernandez is a 2010 Magna Cum Laude graduate of this law school. While in law school, he was executive editor of the law review. He served on the Moot Court Board. He was named the "Best Oralist" in the Moot Court Intramurals. He represented the school in the Gibbons Competitions. He is an attorney at Rumberger Kirk & Caldwell in Miami, focusing his practice on products liability, admiralty, premises liability, commercial litigation, constructional litigation, [and] class actions.

I think it is apropos that he is introducing the keynote speaker because he received the first ever Excellence in Professionalism Award from the 11th Judicial Circuit Court Professionalism Committee for work on that panel. He is the President of our own Peter T. Fay Inn of Court.

So, I think it is very appropriate that our distinguished graduate, who I had the honor of hooding and presenting his diploma to, back about 7 years

ago, to introduce our keynote speaker. So, without further ado, I introduce to you, Armando Hernandez.

Mr. Hernandez:

Thank you Dean Garcia for those comments. Thank you to the STU faculty, the entire St. Thomas Law Review Board, and everyone else who played a role in making today a reality. This symposium all started as a fleeting idea, and it's been quite astounding to see it materialize.

I'm incredibly impressed with the talented, ambitious, and hardworking members of the Law Review Board, particularly Claudia Capdesuñer, Jose Rohaidy, and Bernadette Guerra, who I worked closely with in preparing for this symposium. I'm incredibly confident in the future of the Law Review, and I'm incredibly confident in the profession because of those three individuals and the entire St. Thomas Law Review Board.

St. Thomas Law Review now joins one of very few schools in the entire country, that I'm aware of, based on my research quickly last night, that has dedicated a symposium to the vital topic of professionalism and civility. This is a very important moment for everybody present here today. It's an immense honor to be invited back to the law school to participate in such a symposium.

It's great to be a part of this movement, and join the amazing panel of judges and distinguished attorneys that we have here today. I can recall before Dean Garcia hooded me – I can recall back to my orientation when he told me to look to my left and to my right and said, “You need to be professional and civil because these are the people that you'll be working with in the future.” His message continued to resonate—he talked about weaving itself and threading itself and it actually did that. It did exactly that.

It weaved itself throughout my entire law school career, through the amazing examples and mentors that we have here at St. Thomas. My time at St. Thomas laid the seeds which eventually led me to dedicating so much of my time to professionalism and civility. And those seeds were cultivated when I had the incredibly good fortune of meeting the person that I have the honor of introducing here today, which is Paul Lipton. For those of you that either know Paul, have had heard him speak, or have read his book, you already know how magnificent of a human being he is. For those of you that don't, you're in for a treat today.

By way of background, Paul was a prominent trial attorney in South Florida for 40 years, trying countless jury and non-jury trials. He retired as a shareholder at Greenberg Traurig in 2012. And after retirement, he I guess was bored, and not knowing what to do with himself, he decided to

join Rumberger Kirk & Caldwell as the Director of Professionalism, an incredibly unique and one of a kind position.

My first interactions with him were in this capacity as the Director of Professionalism. He would have one-on-one meetings, group meetings with the associates, and discuss things such as: the art of persuasion, work life balance, networking.

And as soon as I heard him cite Sun Tzu, *The Art of War*, and Don Miguel Ruiz's *The Four Agreements*, I knew we were going to get along very well. Then, sometime in 2013, I heard about an opening to apply for the local professionalism panels, and I decided to give it a try. I was selected as an alternate, and it was a huge honor to just even be considered for the local professionalism panel.

And I recall Paul walking to my office one day after I had received notice about becoming an alternate, and he emphasized the importance of impacting the greater good, making a lasting impression, and striving for something that is bigger than me and bigger than all of us. He may not know this, but that conversation inspired me more than he'll ever know. I never looked back. I never thought twice. I really embraced the call to action and the selfless responsibility that went into serving on the local professionalism panels.

Paul's impact extends far beyond Rumberger Kirk & Caldwell. He serves on the 11th Circuit Committee on Professionalism in Miami-Dade County. He, along with Judge Soto, Judge Wolfson, and Judge Rebull, who are all here today, you will have the pleasure of hearing from, they basically spearheaded and created the local professionalism panels here in Miami-Dade County.

He's also the author of the well-reviewed *Hour of the Wolf: An Experiment in Ageless Living*, which I've brought with me here today. He's been on nation-wide tours for this book. He's been on cruise ships, traveled the world, spreading his message. And he's also been a guest speaker at the Peter T. Fay Inns of Court, which got great reviews from the law students and the members of Inns of Court. And what I'd like to share is some wisdom from the book. In chapter 8, which is entitled: "How Does the Hero Live in a Non-Heroic Age?" I think there is a quote in that chapter that is really going to frame this symposium here today.

And Paul says, "Without heroes, the world would be left with nothing but victims, bystanders, and perpetrators of one bad after another. Someone has to be the clear voice of might for right, and reminding all of us that means do matter, as opposed to only focusing on achieving the end or the bottom line. But how does the hero live in a non-heroic age?" Without fur-

ther delay, I introduce you to my colleague, good friend, and valued mentor, Paul Lipton.

Paul Lipton:

Thank you very much. Want to hear my side of the story? I appreciate that. We have an hour window of time, so let me just share some thoughts with you. Sometimes we see things, and we see it every day that we become numb to it. We just ignore it. It passes by like you – I made a comment yesterday, the sun rises, and you don't really appreciate the majesty of the sun rising. You see it every day. In Dade County, in each courtroom, over the judges' bench, there's a sign. The sign says, "We who labor here seek truth."

Think about that. It doesn't say, "We who labor here want to do law," because, as I commented to Armando yesterday, when you think about it, the law is very antiseptic. It's really definitions, prohibitions, and time frames. That's what it is. Read a statute. It's a definition of a contract, report, a prohibition, and some time frames. It's not truth. In the courtroom, when it says, "We who labor here seek truth," what I think it's saying is, "We who labor here seek justice."

So, the definition of truth: authentic, candid, faithful; the whole story. Justice, the definition: honesty, integrity, impartiality, fair-play. So, in the courtroom, we have a sign that says we who labor here will be candid, faithful, tell the whole story, be honest, have integrity, be impartial, and engage in fair play. Really. Is that what happens though?

We discussed in the past the concept of – some of you will appreciate this, but I used to talk about Cicero and his definitions of justice and injustice. So let me share this with you for a minute. There's passive and active injustice. I submit to you that professionalism and civility are not mere niceties. It defines who we are, how we treat each other. Are we being candid? Are we being faithful? Telling the whole story? Are we being honest? That's what that is.

We're not talking about how we say hello to each other. We're talking about the consequences to our society and our profession when we don't treat each other fairly. So, Cicero, he says that there are two types of justice: active and passive. Active injustice, I do something really wrong. I'm actively engaged in injustice.

But let's talk about something that I find much more disturbing, and you should find much more disturbing, and that's passive injustice. Passive injustice is someone sitting by, watching injustice occur and doing nothing, usually because it's not in their self-interest to do something.

Passive injustice, let's be real candid. Is it the judge sitting in the courtroom, watching bad behavior, and saying, "not my job," "don't get me in the middle of this"? Is it the government watching injustice occur and saying, "you're on your own, good luck, hope you figure it out". Passive injustice, in my opinion, is more dangerous right now than active injustice. It's equally dangerous. I think it's very dangerous.

So, why are we here today? We're here to talk about how we treat each other. I love movies; some of you maybe remember the movie *The Verdict*. Great movie with Paul Newman. There's a line in the verdict where the lawyer says to the jury the following, "The law doesn't exist to give them [the parties in the case] justice, but to give them a chance at justice." That's why you're here; you're officers of the court. You're going to be officers of the court. You're here to give people a chance at justice.

That doesn't mean you don't fight the good fight. That doesn't mean you don't battle the good battle. But as Judge C. Clyde Atkins told me once, you just don't lie, cheat, and steal. Fight the good fight, but remember that when clients come to you, and when you go into the courtroom, God willing, you're entering an island of sanity. You're not continuing to live in an insane setting. When you go to see officials, and you go into court, or you go to the government for some help, you're hoping that you go into an island of sanity. That's why we're here today, to talk about that concept. I don't want to take up more of your time because, as Armando knows, I can go on forever.

This is a topic that is critical, but I would end this way, this is about our credibility as a profession. This is about our credibility as a society. How we treat each other, because I submit to you that in the end, everything that we do is a question of faith. Think about it. Work together, not because anyone's forcing us to be here, but because we have the faith that we're all doing our jobs well and honestly. You have the faith that the professors have studied and will teach you well. You have faith that the judges will do their job fairly and impartially. You have faith that the government will listen to your concerns and try to solve problems.

Without that faith, I submit to you we're lost. So, let's use today to talk about truth, justice, and as Superman says, the American Way.

Professor Rizzardi:

Thank you for the opening remarks, and for getting our session off to such a glorious start. In our next panel, we have the honor of having three judges here today. So, we've got a panel scheduled here for the role of the judiciary in professionalism. And I would point out that the center for professionalism, here in Florida, was a joint project of the Florida Supreme

Court and the Florida Bar. So our judiciary is a leading voice in the whole movement of professionalism. Our Florida Constitution says that the Supreme Court has got exclusive jurisdiction to regulate our lawyers, and to regulate their admission, and their discipline. So again, the role of the courts.

Our oath of office says, "I will maintain the respect due to the courts of justice and our judicial officers." The judiciary is fundamental in the leadership of the dialogue of our civility and professionalism. And we've got today three judges on our first panel. So, we've got Judge Soto, Judge Rebull, and Judge Wolfson all here, and I've been asked to allow you each to self-introduce.

Judge Soto:

Good morning. I'm so glad everybody woke up so early for professionalism. There's hope! I'm Bertie Soto. I'm the Chief Judge of the 11th Judicial Circuit. I'm very glad to be here. Professionalism is one of my priorities as Chief. I've been Chief since 2013. I am lucky enough to have my co-chairs here of the professionalism committee, and the head of our professionalism panels, Armando Hernandez, who is here. And I'm looking forward to discussing professionalism with all of you.

Judge Wolfson:

Good morning, everyone, I'm Andrea Wolfson. It's a pleasure to be here. Thank you so much for having all of us for this important topic. I've been a county court judge since 2010. I was appointed by the governor and elected in 2012. Before that, I was an assistant state attorney as well as special assistant U.S. attorney. And I thank you again for being here, and I look forward to our discussion.

Judge Rebull:

Good morning. I'm Tom Rebull, I was appointed by the governor in 2011. I was in the Circuit Criminal Division until 2015 and have been in the Civil Division ever since. Before I was a judge, I was a civil litigator. Actually, I started my career as a law clerk at the Third District Court of Appeal for Judge Joseph Nesbitt, who for me, started me on the path for being a gentlemen and being a professional and the mark of civility. But as a civil litigator, actually it's kind of funny – Jerry Greenberg and I talk about this a lot.

We had a case against each other where there were other lawyers also working on the case, but Jerry and I got along so well. And when you apply to be a judge, one of the things you have to do is list your opposing counsel.

I always say, civility can be a means to an end, like becoming a judge, but it is also an end onto itself, and we'll talk about that a little bit in more detail if we have some time. But there's sort of a real life example of where being civil, and being professional, and being cordial, and actually being genuinely friendly while fighting hard at the same time on the facts of our law, and have positive benefits. Thank you, everybody.

Professor Rizzardi:

So we do have a number of students in the audience. Many of them have not had the opportunity yet to actually be in the courtroom, and to experience the environment, and the tensions that arise. So, I want to give some context, and the first thing I'd like to do, is ask each of you, without revealing names, to share a particularly memorable example of unprofessionalism that occurred in the courtroom. Mr. Lipton, you are welcome to join in.

Judge Soto:

I can give you an example. I was a brand-new judge, and I probably didn't listen to new judge's school that much, because when my rear end got off the seat I should have gotten out a lot sooner, before things got worse. But I had a brand-new baby prosecutor and she was covering calendar for another colleague who was running late. And there was a witness to their case for trial calendar that was not appearing, and they were waiting for that witness, and wanted that witness in order to proceed with their case.

And I usually call calendar and if they weren't ready, if it was after the second time, they would have to drop the case. And they didn't want to. So, I kept calling this lawyer up saying please let me know if you're ready. "Your Honor, I can't call the case, I have to wait for my partner." I said, "No you don't you call your case." "Judge, give me 15 minutes." I gave her 15 minutes. At 15 minutes, "Your Honor, please just let me wait for Lauren, she's coming in."

"Ok, I'm going to give you 5 minutes." At 5 minutes, I said to her, "Ok, you need to call the case," because I knew that this had been a contentious case where the witnesses hadn't appeared, and I had already given them extra time to go to trial. And she refused to call the case. And then I said to her, "You need to call the case." She says, "I'm not going to, your Honor." I said, "Ok, can you take a seat in the box?" She says, "No, I can't take a seat in the box." As a judge, that's usually the worst thing you can do – I don't think she even got it.

Now by this time, I was pretty much standing in the courtroom, and I said, "Her last name, meet me outside!" And we had it out in the hall. Thank God I didn't have it in the courtroom. But I remember everyone in the courtroom; it was a packed courtroom, all the litigants, [and] the clerk. The clerk kept looking at me, and I'm looking at her, it was like a tennis match, like who was going to win?

And I think it was, you have to learn, that unfortunately if you're on the losing side, the judge usually wins in the courtroom. Right? And that's why you have appeals, and you have to learn to let go. And I think the students should know that that's a hard thing. You're a lawyer; you've become a lawyer to be aggressive. You're an "A" personality, that's probably why you're here. And then all of a sudden you got to listen to someone in court, and be quiet when you've prepared this incredible opening statement or whatever you think you're going to say, and in two seconds, the judge shuts you down.

So, you have to learn to read your audience. And right then in there is your judge. So that was the worst I ever got out of control in my courtroom and I'm happy to say that was 19 years ago. But whenever she sees me, because she's still practicing, she's like, "Judge, I'm so embarrassed about that moment." And I was too, because I was young, and we all make mistakes, and judges make mistakes. But when you're in a courtroom, remember the judge has the last word.

Judge Wolfson:

In very generic terms, I think the way that I'll explain, bad experiences that I've had, is that words that come out of your mouth have meaning. So, I'm going to repeat that. Words that come out of your mouth have meaning. So, what I've seen, and I'm in the County Court Criminal Division, so I have brand new assistant state attorneys and assistant public defenders appear in front of me. I don't think I've ever had occasion to have someone with nefarious intent who's trying to lie or anything of that nature.

There have been a lot of really negligent mistakes that take place, and where lawyers will stand up in court and say, "Judge, the offense incident report does not exist." That kind of almost makes me have chills down my spine, because I've seen it happen so many times where two weeks later, in a trial setting, the officer's sitting there and says, "Well, I have this offense incident report that I drafted," and the prosecutor looks like they lied to the court.

And I say that in the context of the prosecution, because I was a prosecutor. And I'll admit fully that I probably hold the prosecutors' feet to fire more than I do the defense, just because I walked in their shoes. So, you

have to be just really very careful when you're representing something to the court, to the other side, that you use your words carefully.

From the other side of the spectrum, defense attorneys who will throw out the term prosecutorial misconduct with sort of just this flagrant kind of way, that's a really serious allegation. That's nothing to be taken lightly. And when I was a prosecutor if anyone would have ever uttered those words in my presence, it would have made my head sort of spin around, because that's meaningful.

So, I think you just have to be very careful, and it does go to the heart of professionalism, and it does go to heart of and being a good person, and telling the truth, and being open with what's going on, communication. That what you say really does mean something, and that means in writing, that means orally, that means in an e-mail, in this digital age of text with people, that you have to be very careful how you use your words.

Judge Rebull:

So, I think similarly to Judge Wolfson. What I would tell you is, I don't know that there's any one worst experience that I can identify, but I'm a big believer that the courtroom is, the best example that I can think of, is a secular church. You should treat it that way. In other words, you dress a certain way. Even though I encourage lawyers to be friendly with one another, but in court it's "Mr. Greenberg," it's "Mr. Rebull," because it puts you in the right mind frame for that civility.

I see lawyers that once they get to me they obviously weren't able to work it out with each other, but then they're arguing with each other. And I say, "If you guys don't need me, then please step outside." That's not okay. Lawyers who don't stand, some of the – unfortunately those of you – I see some lawyers who have been in my courtroom. I'm also a big believer in that the setting is important.

Mine is a small, crowded court room, and I think it also doesn't put people in the right mindset to necessarily feel like you're in a place that should be respectful, that you have to listen, and wait until it's your turn, and give everybody a chance to be heard and people accuse – ad hominem attacks, personally attacking somebody, exactly what Judge Wolfson was saying, of lying or misrepresenting something, without any support, but just simply saying it because a lawyer says it. Of course, we all know that what lawyers say is not evidence, and so –

I say you can say all of those things and you're going to try and prejudice me, but I've got 1900 cases so – next week I'll move on. If you want to actually have a real discussion here about a legal issue, or an evidentiary

issue, let's have that. But unfortunately, it happens more often – we'll talk about I guess what we can try to do to stop that.

Professor Rizzardi: Mr. Lipton

Mr. Lipton:

Can I just share this? A number of years ago, there was a judge in court, he had recently passed away, Judge Feder. And in jury trials he had the lawyers wear robes. He was the only judge that did that in Dade County that I'm aware of, but when we tried jury cases – and he had the robes available, and when we put the robes on, everyone acted better. It was fascinating.

Until they put the robe on – I don't know what it was, maybe it was a Harry Potter magic cape or something, but they put the robe on and they just rose to the occasion of the dignity that we expect in a court room.

Professor Rizzardi:

Great lesson. So, we've got dress code matters, we've got to know when to fold them, we've got watch your words, and act like you're in church. But four good lessons. I think one of the things I've experienced as a professor is, I get these students who push back when I talk about professionalism, and they say, zealous advocacy. I'm told that I'm supposed to fight for my clients. And in fact, even the namesake of our school, Saint Thomas de Villeneuve, he established his reputation in part on the scathing attacks on the Bishops. He was a powerful preacher.

In our oath, interestingly, it says that we will abstain from offensive personality, unless required by the justice of the cause. And there are students who grab onto that and say, "See sometimes it's okay to be unprofessional." How do you feel about that?

Judge Soto:

Yes there are, but those are very far and few between. I think there's a way to be an advocate without being unprofessional. If you are becoming unprofessional, you're not being a zealous advocate because people forget what you're advocating for and they can only see your annoying behavior. So, I'm not sure if that's being a zealous advocate. I think you hurt your client more than you help your client, especially in front of a jury.

A judge may forgive you for your stupidity, but a jury won't. They'll be turned off. So, there's nothing wrong with being a zealous advocate, but I don't believe that they are mutually exclusive. You can do both, and you can be an incredibly passionate lawyer, and an incredibly effective lawyer by being professional. You make your relationships with co-counsel be

much more responsible and things move smoothly when you're professional.

Mr. Lipton:

I remember growing up, and my mom and dad used to tell me that if you curse, that means you don't have the ability to use the right language to express yourself. I think that applies to unprofessional conduct, that you just don't have the ability to be an advocate in a way that you're proud of. You're representing yourself. You want to do that. So, I think it shows a shortfall on the ability to be creative, and to be an advocate in a way that brings dignity to the profession.

Judge Rebull: One of the things that we do as judges, in addition to our judging duties, is sit as referees when the Florida Bar files an action against a lawyer for some action to take against their license. And I wrote a report and recommendation on a lawyer who had done a lot of bad things, let's put it that way. Said and done a lot of bad things and specifically, he defended himself on zealous advocacy.

There's a case from the Florida Supreme Court, called *Boca Burger vs. Forum*, and there's a quote in there specifically that addresses this issue. It talks about Section 57.105 as well as the Florida Bar Rules of Professional Conduct, and even the oaths of admission to the Florida Bar, all warrant if any warning were needed that counsel must be governed by considerations other than mere zealous advocacy for the client.

This is the part that I specifically highlighted for this attorney, and for the Florida Supreme Court, "Too many members of the Bar practice with complete ignorance of, or disdain for, the basic principle that a lawyer's duty to his calling and to the administration of justice far outweighs and must outweigh even his obligation to his client, and surely what we suspect really motivates many such inappropriate actions, his interest in his personal aggrandizement." And they've also characterized it as a duty to the legal system and to the public good.

Duty of zealous representation does not outweigh, and in fact, is outweighed by these other duties. They also talk about having, as a lawyer, objectivity, and a sense of impartiality in evaluating all these competing interests. "Objectivity is the ability to distance one's self from personal and client desires in order to evaluate the effect of potential actions on clients, third parties, and the legal system." That's another quote from another case.

Professor Rizzardi: Judge Wolfson.

Judge Wolfson:

I'd just like to throw in a plug for the more professional you are in handling your cases, I truly believe will have a positive effect on the outcome of the case. So, I speak to you from the background of being a prosecutor, and I felt that it worked for me in my career. I come from a small

town in the Midwest, things are a little easier going, people say hello to each other, it's a little different environment. It worked for me well in terms of being that person day to day. The cool thing about it was people totally underestimated my ability to skewer you in front of a jury.

So, I would just be nice to people on a daily basis, conduct myself professionally, do that in the deposition process. I think people let all of their cards out, you let all of your tools out on the table and you know exactly where things are coming from. Not to say that in front of a jury I would behave unprofessionally, but be a little bit more passionate in my practice.

I think day to day in your daily operations as a lawyer when you're conducting yourself, whether it is over the phone with other lawyers, in the context of a deposition, in a calendar call setting, dealing with your clients, setting your clients up with the expectation that you are professional in the way that you handle yourself as a lawyer. A lot of people have these bizarre expectations of lawyers. They see this dog eat dog, kind of Rambo, way of litigating, and it's just not the way it is.

We're working very, very hard. We're here at a law school today, but I can assure you that we work very hard out in the community. We're not just talking to law students. We're talking to practitioners who've been around for 20-25 years. We're talking to Bar Associations. We have summits with municipal lawyers. We're working really hard so that the public's perception of the legal system is a far more positive one than it has been in the past.

Professor Rizzardi: Mr. Lipton, did I see you trying to – ?

Mr. Lipton: No. No that's okay. Thank you, though.

Professor Rizzardi: So, I'm curious if you've seen patterns in when unprofessionalism occurs, or when incivility occurs. Is there a type of case, or a stage in the case? Is it more likely to happen in front of the jury? Is it when there's that motion from the judge? From your experience, if you notice that there are circumstances where it seems to get tougher, and that unprofessionalism, that incivility starts to come out.

Judge Soto:

I think it happens in discovery and in e-mails. Your oath says, “In and out of the court room,” and I have seen some pretty incredible e-mails that have been presented to me during motion practice, and I cannot believe that anyone would press send. I guess it’s the fact that you’re not seeing the person when you’re writing it, and you’re in the heat of the moment. You’re very angry, or you’re very upset, or you’re very passionate, and you write this email.

Think about it. Back in the days when I chiseled on a tablet like Fred Flintstone and typed up a letter, and I had to put a stamp on it and put it in the bin to mail, I could think about what I’m sending. Or I dictated it to my secretary and she typed it up for me. You don’t have that luxury. You live in a world of social media where whatever 86 characters mean a great deal and you have to figure out what to say. You need to think about what you put out there. Everything you write, you should think about it like it was a postcard that the mailman and anyone that saw it could read it.

That’s true of when I was young. It’s just more true now because of all the ways you can send messages. Maybe not even in the trial, but I’ve seen lawyers talk about co-counsel on Facebook, on Twitter, on Instagram, and I’m like, really? That’s inappropriate. You don’t know what juror has wrongfully looked at your Facebook during a trial, or looked you up and seen what you’ve put on what you’ve done in your different social media hubs. So, you just have to be really careful in today’s world about how you disseminate information.

Mr. Lipton:

Let me follow up on that with two points. Completely agree. Those of us of a certain age, probably only three of us in the room at my age, but of a certain age, remember that we were told this, “When you get something, and you want to respond to it, Paul, write the letter and put it in the top drawer, sit in the top drawer for two to three days, and by the time that you’re ready to send it, the issue’s been resolved or you’ll tweak it to tone it down.”

You live in the age of instant everything. But here’s my suggestion to you, simply because you get an e-mail, a text, or something like that, doesn’t mean that it’s controlling your time response. You’re still in control of what you do. So, I’ve told people, when did it happen that as soon as you get something you’re required to immediately respond? I never did that. I would get it, and I would go, “Well that person’s having a bad day,” and I’d put it aside and go on about my day.

Then usually I'd get something, "I haven't heard from you." Then like the next time I'd say, "All right now let's talk about this because it's on my time. I'm not going to be controlled by your insanity."

Judge Rebull:

I would say that if there's a pattern that I see sometimes it also may be lack of preparation. So maybe, and I don't know the facts of the situation that Judge Wolfson referenced, but maybe that lawyer, when they made that statement, hadn't actually done their homework, to find out whether in fact – or hadn't been thorough whether there was an OIR or there wasn't an OIR. I see people winging it when they shouldn't be winging it sometimes.

So then, the defense mechanism is sort of to attack and say there were misrepresentations and etcetera. Maybe also complying with what you should be complying with, which is conferring before you walk into the courtroom. "And here's my position, and what's your position? And oh, there was a misunderstanding." So, lack of preparation I think leads to unprofessional behavior at times.

Professor Rizzardi:

Thank you for those thoughtful answers. I'm recalling, in your message about the written communications, that in 2011 our Supreme Court amended our oath. They did it sua sponte. They were getting frustrated with what was happening in our written communications in our profession, and they added this to our oath. It says, "To opposing parties and their counsel I pledge fairness, integrity, and civility. Not only in court, but also in written and oral communications."

It was the Supreme Court speaking directly to every one of us as lawyers saying, not only in court, but also in written and oral communications. Then the professionalism expectations came out recently, and those even have rules in them about what you do on social media, what you say on Facebook. So your written communications really do matter.

So, recognizing the role of all of you as judges and officers of the court, and trying to steer the dialogue and steer professionalism, how have you personally dealt with situations where you're starting to see the path of unprofessionalism, or the incivility coming out? How have you helped steer the lawyers so that it doesn't rise to the level of misconduct and disciplinary issues, but kind of nip it in the bud?

Judge Wolfson:

I feel kind of lucky to be in the position that I am in, in County Court

contemporaneous to the issues that happen day to day in court. They'll come back into my office; we'll talk about things after the trials, when the time is appropriate we talk about things that have happened during the course of trials. So it's a very easy environment for me to be in.

Typically we deal with it as it's happening, as opposed to sort of waiting months and having somebody come by, or bringing somebody into my office. I try to be as transparent as possible on a daily basis as to what my expectations are. So it's very different for us— Chief Judge Soto's in the Family Division, Judge Rebull is in the Civil Division, it's a totally different dynamic.

I do want to say, though, and I hope that this message resounds, that we, as members of the judiciary do take responsibility for much of what happens in terms of professionalism inside the courtroom.

At the judicial college, I teach on the mock trial faculty. For the most part we teach judges sort of stay in their own lane as they're presiding over cases, but there are certain areas, like areas of fundamental error, or areas of gender, racial, religious, ethnic bias that have to be dealt with. You must step in. You must identify it and be proactive.

The finer lines take place when there are legal issues, because a judge really can't, should not; insert him or herself into the proceedings on legal issues. Recently a case came down from the Third DCA and it was an invited error type argument that the prosecution made during closing argument. The legal issues set aside, I want to share with you a quote that you're going to see is mangled up, because I carry it around with me a lot and I really think about it a lot. I'm trying to figure out, and we were all trying to figure out how to deal with these types of issues, but I love this quote.

“Perhaps more important is the broader jurisprudential issue which is raised by cases like this. In our view, it is no longer — if it ever was — acceptable for the judiciary to act simply as a fight promoter, who supplies an arena in which parties may fight it out on unseemly terms of their own choosing, and then, on the ground that the loser has asked for what he received, obediently raise the hand of the one who emerges victorious. We demean ourselves and the system of justice we serve when we permit this to occur.”

I take it to heart. We do have to recognize the fine line of legal issues, we can't insert ourselves. But, as Paul mentioned, you can't just sit back and say “not my job.” It means something, as Dean Garcia read that quote from the book, civility has to do with an awareness of the people around you. It really does go back to simplistic things that I teach my seven and

nine-year-old, and that you all learned when you were in kindergarten, is to treat each other like you would like to be treated.

It's as simple as that, and to be aware of people around you. I think we walk through this life so often with blinders. Be aware. Just walking down the street how many times have we had the experience where someone is literally walking right at you, and unless you move over you're getting run over? What's that about? Where does that come from? So I think we have to do better just daily. That's my two cents. I don't want to get too excited. It's too early in the morning.

Mr. Lipton: Can I just share this? Tom, do you mind if I just share this? I think one of the questions that's being asked here is, how do we deal with the jerk? How do you deal with it? You want to be professional when you're faced with the blathering insanity. Over the years I've concluded that you have a choice, and it's a choice of how you define yourself. The best lawyers I know in this community, and around the country, are people that have a certain sense of humor, that see the absurdity of the human condition, and appreciate that they define themselves.

I'll share this with you to put everything in context. I discuss this in my talks on my book. I have news for you. I'll be brave enough to tell you, no one else will. You're not getting out of life alive. That's just it. Don't be dragged down. Define yourself, that's your legacy. When someone comes at me blathering, I usually have said over the years, smiling, it'd kill them – I'd smile and go, “You're having a bad day. Hope it gets better for you. Let's go into court and argue the case.”

Judge Rebull: The only thing I would add is the Florida Bar passed these professionalism expectations which are part of what makes up the Code of Professionalism which the Florida Supreme Court codified with the professionalism panel that Armando sits on, and has been so instrumental in making it work. There's a whole section on decorum and courtesy. Some of the things I've already referenced like making sure you refer to people by their last name including witnesses, everybody, my clerk, the court reporter. Another one is, a lawyer should inform client and witnesses that approving and disapproving gestures, facial expressions, or audible comments are absolutely prohibited.

If I could tell you how many times I've seen lawyers, not just the clients, who I can sort of understand, it's emotional for them and they're hearing something they don't agree with, but lawyers making faces when the opposing lawyer is making an argument. Even in criminal court I saw lawyers doing that, on State side and on the defense side. Justice Kennedy wrote an article about the fact that civility is really about democracy, and

about respecting each person's individual worth, and giving everybody an opportunity to be heard even if you don't agree with that.

When you work as a lawyer in the court system, you're working in the government system. So I always remember, and I've referenced when I've talked about this other times, if you've ever seen a video of Parliament in other countries where they're literally coming to blows on the floor of Parliament and you say to yourself, my God what kind of democracy is that, that they can't even – it used to be that in the Senate, I don't know if they still do this, I haven't watched some C-Span in a while, but the fine gentle women from the state of –

Even if you don't agree you're putting yourself in the mindset of that I have respect for their ideas. We may not agree, but we're going to have this debate, and then somebody's going to win and somebody's going to lose. That's really how it should be in the courtroom as well in my view. So I do what I can to make that happen.

Judge Soto:

I like the defining part. When I was telling you the story of the young lady who was a new lawyer, I felt as bad, because I let her suck me into her frenzy. You have to sleep at night. This is stuff you learned from kindergarten in the sandbox. Right? You treat people well, they treat you back. You kill with kindness. It doesn't work the other way around. Don't let people bring you down. A judge knows, when they're listening to you, who in the room is being difficult. You don't have to point that out.

You don't have to be shrill just like they are shrill to get your point across. That's more effective than joining the bandwagon. I don't think you want to have someone drag you into bad behavior because they don't know how to act. Let the judge take care of it. I do think, and I own it, that the judges need to be more proactive, not passive injustice and allowing people in their courtrooms to act like children.

I always tell them I am not a teacher. I didn't want to be a kindergarten teacher, and that's not going to happen here. That usually stops it, but if a judge lets it go, it can get out of control. So we can do more to control our courtrooms and be more professional and allow you to be more professional, but don't get sucked in by bad behavior.

Professor Rizzardi: How about to our audience, opportunities to ask? Sir?

1st Audience Guest:

My question is just about professionalism, when the unprofessional behavior is coming from a supervisor or subordinate or colleague, how do

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you handle that behavior?

Judge Soto: Yes. Do you mean when another judge misbehaves?

1st Audience Guest: Well I'm not a judge so. . .

Judge Soto:

Well that would be my colleague. Mr. Lipton I think what you're saying, correct me if I'm wrong, is what happens when you're an associate in the firm and the partner is acting badly? Is that part of your question?

1st Audience Guest: That's part of my question.

Mr. Lipton:

Right, and that comes up a lot. I get that a lot from young lawyers that will call me and say, "What do I do? It's my job, I can't afford to lose it, but they're asking me to do 'x'." That's a legitimate – that happens more than you'd like to think it happens. Even though you have student loans, and even though you want to keep the job, it's probably not the job you want then. I think you still have to make the personal choice of, I don't define this way, because that road down the bad way it happens fast. When it goes south, it just happens fast.

So, I think you have to make a decision and figure out is there a way that we can accomplish the goal, but be ethical and proper and decent about it? There's another solution I figured it out, or you have a much longer night of thinking about what you want to do the next morning.

Professor Rizzardi: Back row? Yes ma'am.

2nd Audience Guest: What do you do when you have a complaint against a judge?

Judge Soto:

That's what I get to do as chief. I do get complaints, written complaints, not anonymous complaints about judges. Sometimes people will tell me I don't want to say it's me, I have an ongoing case, but this happened. I'll usually look into it. If it's a letter from a lawyer, I'll usually send it to the administrative judge of the division to go ahead and pull the file and look at it. If it's an administrative judge then I handle it because I have no one to give it to.

I work with my judges and I work with the person who's making – if it's a valid complaint. Sometimes I get a complaint about the outcome. I don't sit in in appellate capacity. I do have judges that get to work late, hopefully not often, and who have bad tempers sometimes, and maybe have a bad day, and we speak to them. If it gets to the point where I'm obligated

under the administrative order of Chief Justice Labarga from 2014, I have to tell him about it.

We recently had a judge misbehave not in the courtroom, who no longer sits on the bench, and at 6:00 in the morning, I received calls from individuals who were at a restaurant with that judge, and I was calling the Chief Justice at 8:00 in the morning. I think now more than ever, because of that administrative order from Chief Justice Labarga, we as administrative judges and chief judges of the state have to be more forthcoming with misbehaving judges.

Mr. Lipton: If I could just share this, that's one reason why in front of certain judges you always want to make certain you bring a court reporter. So you can make a record in a proper decent way. With all due respect, Your Honor – that's why you must make a choice and some cases that – there were some cases I had where even it was a motion to say hi. I had a court reporter with me.

Judge Rebull:

I would just say, your question is what do you do? I didn't appreciate until I became a judge the role of administrative judges. I only knew the civil division the transfer calendar to get a case transfer from one division to another. One thing you can do is speak to the administrative judge. It depends on how you want to ratchet it up. You can file a complaint with the Judicial Qualifications Commission.

I will tell you that I believe the Florida Supreme Court in all instances of misconduct, whether it's by judges or lawyers, has less tolerance of it and is more willing to impose strong sanctions than they have been in the past. I think I'm not the only one that holds that opinion that we're starting to see that. Judges will make a recommendation for a certain type of sanction and they will go higher than what was recommended. What I would call an upward departure, so to speak. So you may have a receptive audience.

2nd Audience Guest: I want to thank you all for coming. What happens when you mess up and the damage has been done. Next thing, what do I do?

Judge Wolfson:

I think setting aside any malpractice type discussions or anything because that's far more complicated, in my humble opinion, own it. I really do think there is something to be said for you, re-read the e-mail, you understand how it could be perceived in a different way. You make that

phone call and say listen, I got to be better than this. I wasn't raised this way and I apologize that I put that in writing. I didn't mean it the way it came off. Think we could start over? Kind of hitting the reset button, I think that exists. I really do.

I take a deep breath, sit back, make a call and own it. I think, even I have an understanding that in the medical profession they're teaching young medical students that it's okay to say I'm sorry, or that I made a mistake, which would have never happened 20 years ago. I think people definitely appreciate it when you say that. I'll say from a judicial perspective, not talking about something unprofessional, but if I've made a mistake, maybe I misheard something, the argument that was done in court, and I'm going to reverse myself, I make sure that I do that open and in public so that everybody can hear.

It takes a certain level of humility to admit that you were wrong in front of other people, but I think people really appreciate that. I can remember times when judges screwed up on cases that I was standing in court and I'm like gosh that's really is screwing it up, and then they'd take me back to chambers and be like you know I really screwed that up. It's all in secret, and it doesn't really mean as much.

I do think you can just make that phone call and say, I'm sorry, can we start over? I think our communications got off on the wrong foot. And that deals with when you're working with opposing counsel, with people you're working with, people at your law firm, with your clients, and you can do that. If that continues to happen, then that becomes who you are, and it becomes very unfortunate.

I tell the young prosecutors and public defenders all the time, you form your reputation in this building within the first four months. It's totally unfair. They have no idea what they're doing, they just don't, but they're forming their reputation right there and then. So, you have to be very careful, but I think you can definitely say, "I'm sorry."

Mr. Lipton:

And there's something to be said in this day of social media and everything being online – there's something to be said to go old school, and that is calling someone up and saying, "Can we grab a coffee?" We just sit down and see if we can reset this. I owe you an apology. I'll buy the coffee. I can't tell you, some of my best friends are people I opposed that we went out for coffee afterward and said how did that get out of hand?

Professor Rizzardi: One last question.

3rd Audience Guest:

My question was spurred, because this morning I woke up, and I looked at the news, and it said, “Paul Ryan doesn’t want Trump working with Democrats.” I thought, as attorneys we’re often asked to reach across the aisle and to discuss things with opposing counsel and to try to work together to try to seek that truth and that justice that you guys were mentioning.

So I guess my question is more of a topic, but in a world in which our leadership, our government is refusing to reach across the aisle, and in a world in which our leader, our president, is tweeting very unprofessional things, how can we rise above the fray? How can we still be zealous advocates? If you could just touch on that.

Judge Soto:

You got to be you. Thank God you’re not a part of that. Right? We live in some difficult times, and actually Paul and I were talking about that earlier, where the judicial system is being questioned. I was recently testifying in front of the House of Appropriations Committee in Tallahassee about caseload and workload, and whether judges were working, and why do we have an hour lunch.

It’s a new world, and I embrace that. I’m okay with that, because yes, we have a couple of people who may not be working their full extent, but our judges work really hard. We have 190,000 cases pending in Miami-Dade. I think for a long time we have been apathetic, and we’ve have been accepting our roles in society and moving on. This is time to wake up. This is time to make a difference. This is time to remind people how important the judicial system is, how important lawyers are, how responsible lawyers are, all the good things that we do.

So embrace it rather than see it as a negative, use it to tell everyone how well you all are doing.

Mr. Lipton:

To follow up on that, be the one to step forward. Be the one to be the adult. I would say to people regularly, “Could the kids leave the room please?” We need some adult conversation now. These are serious times, we need serious people, and we can’t lose faith in the system. The worst thing that – we had a summit in September with all municipal lawyers. We do every year, we have a summit. We have municipal lawyers, and the comment I made was we’re probably one traffic stop away from Ferguson or Baltimore or what have you –

We must have faith in the system. We must have faith in each other. So you be the one.

Judge Rebull:

This is sort of a follow up to what Paul just said, but I think your ultimate question was: how do you do it in the face of all these things? My answer is your conscience. In other words, what does your conscience tell you is the right thing to do? Who are you as a person? You have to define that for yourself.

Ironically there's a working paper on professionalism from the University of St. Thomas Minnesota, that references – and this professionalism discussion is nothing new. It's been going on – I'm glad that Judge Wolfson made the Rambo reference, because I usually make it. Which tells you how dated Rambo litigation – those of you who may not know what Rambo is, it was a movie in the 80s with Sylvester Stallone and he was a real tough guy.

This national action plan on lawyer conduct and professionalism was adopted in 1999 by the Congress of Chief Justices. It emphasized the role of personal conscience in achieving professionalism, and this is what I was going to close with was, for me professionalism ultimately is a personal not an institutional characteristic. No disciplinary system can enforce professionalism and no amount of exhortation by judges and bar leaders can instill it where it does not already exist.

The vast majority of lawyers possess this characteristic to some degree or another, but far too many have allowed their sense of professionalism to become dormant. The institution – this is where we come in – the institutional framework of the legal community can create a climate in which professionalism can flourish, but individual lawyers must be the ones to cultivate this characteristic in themselves. Which is ultimately for me your conscience, what do you think is the right thing to do?

Professor Rizzardi:

What a great way to end that panel. Thank you very much to our speakers. We have on our schedule a 15-minute break. During that break, I want to give everybody a heads up, there's been an announcement that was sent out that we've received a boil water alert here in our community, so please make sure you drink from bottled water containers or can containers. Don't use the water fountain. You have 15 minutes.

Professor Rizzardi:

Good morning again. You always know the symposium is going well when the buzz is going on. Conversations are going even if the coffee is not flowing as much as we'd like so that's good. Thank you for coming back. Our second session today is on current trends in Florida disciplinary hear-

ings. I'd have to point out that disciplinary is a loaded word. There's a disciplinary vehicle through the Florida Bar for violations of our ethics rules as students from my class have learned.

Then there is this other process that we have with professionalism, and not everything that we would consider unprofessional conduct, rises to the level of a breach of our ethical responsibilities in the Florida Bar rules. Nevertheless, we've been developing these procedures to deal with problems that happen and things that go wrong in the courtroom, and things that go wrong in the relationships between lawyers.

Our next group of panelists will be discussing, how do we deal with problems, and how do we try to remedy the problems when they occur? I point out that discipline is becoming more and more of an ongoing dialogue. I've now had the privilege of reading Florida Supreme Court opinions that tell me in a footnote that this case should be studied as a classic example of unprofessional conduct. We've got judicial circuit panels now that are publishing newsletters and telling us stories about breaches of professionalism standards, and unprofessional conduct, and trying to educate the community.

Asking us law professors to share them. We have a new document, the Professionalism Expectations. It's a document that now says professionalism is not just an aspiration anymore, it's not just recommendations. It had mandates in it. It has imperatives in it. It says you shall behave in certain ways.

So then the question is, if you're going to say you shall do something, you must do something, then you need to have some sort of enforcement process. There needs to be a carrot, there needs to be a stick. So what is that stick, and how does it work and how do we use it? I'd like to start by allowing all of our panelists to self-introduce, and then I'm going to have some specific questions for each of them. Justice Contero, I think I should give you the first honor please.

Mr. Cantero:

My name is Raoul Cantero. I am a partner at White and Case in Miami since 2008. From 2002 to 2008, I was a Justice on the Florida Supreme Court. Before that, I practiced law in Miami at a firm named Adorno and Yoss, specializing in appeals.

Mr. Gerald Greenberg:

My name is Jerry Greenberg, and let me just start by thanking everybody on behalf of our whole family, I'm sure Ben will say something simi-

lar, for doing this panel in honor of and in recognition of my father. He loved this law school tremendously and cared deeply about the issues that we're talking about today so it couldn't be a better fit.

Aside from being his son, I'm an attorney at Gelber Schachter & Greenberg, a firm that I opened with two partners about five years ago. I began my career as a law clerk in a federal court, then was an assistant U.S. Attorney, then worked at Stearns Weaver in Miami before we opened this firm. My practice is about half white collar criminal stuff, and half commercial litigation.

Ms. Falcone:

Hi, my name is Jennifer Falcone. I am currently a Bar Counsel here in Miami. I have been doing that for about ten years now. Before that I was a prosecutor for about ten years. I worked for the Attorney General doing criminal appeals for about three years in between those two jobs. So my experience is decidedly on the prosecutorial side. I went to George Washington University Law School, and I'm very happy to be here today. Thank you for inviting me.

Professor Rizzardi:

Thank you all for being here and my first question is for Justice Cantero. I'd like you, if you could, to elaborate a little on your experience and your assessment of the diversion process. Lawyers go through, and their practicing, and the complaints are coming in, and there's this recognition that the lawyers engaged in some form of unprofessionalism that we're trying to deal with as an institution through the Bar and through the courts.

Then we refer them over to this process that's not quite disciplinary, it hasn't risen to the level of the Florida Bar taking action, but could you share with the students your role in that and your assessment of it?

Mr. Cantero:

Sure. I guess I should have also mentioned in my self-introduction that when I was a Justice on the Supreme Court, I was also the chair of the Florida Supreme Court's Mission on Professionalism which included lawyers and judges from around the state that studied the issues of professionalism and worked with the Florida Bar's Center for Professionalism to create a curricula for lawyers that engaged in a lack of professionalism.

So that is the first area of inquiry where a lawyer may have crossed over the professionalism line, but not the ethical line. I see it as two lines that are crossed, and the lines are getting closer and closer, and we can talk about that, but there are two lines. Sometimes a lawyer will cross the line

of professionalism, but doesn't rise to the level of a rule of professional conduct, at least not while I was on the Court.

But that lawyer did something that was referred by a judge to the commission or the Florida Bar and they would say: "Well this is really a professionalism issue, let's take care of it there." We would have professionalism programs, seminars for that kind of conduct. An all-day seminar, where we would counsel them about the behavior that occurred, what produced that behavior, how can we stop it from occurring in the future, and if that's the only person's offense, that's probably all that lawyer had to do was go to that all-day seminar.

As offenses start increasing they may get more and more involved on the ethical side, but also I think there were some professionalism violations that were so profound that the Florida Bar and the Court would say well that crossed both lines, and we're going to prosecute that as a breach of the rules of professional conduct. Which means now that all of the possible disciplinary measures such as suspension, and disbarment are implicated.

One such case that I remember was a lawyer in a deposition that was asked for certain documents, and she looked in her bag and said, "Oh, I don't find them here." It later became apparent that they were there and weren't able to be used in deposition. As I recall, that lawyer got suspended. So depending on the level of conduct it could rise to that kind of level.

The Florida Supreme Court has become more and more strict on lawyer misconduct and less and less patient with both ethical violations and a lack of professionalism. Hence, its opinion in 2013, where it re-established the local professionalism panels and reestablished a code for unprofessionalism complaints, which can be resolved anywhere from an informal conversation or phone call to a full blown hearing before a professionalism panel.

On the ethical side, the Court has been more and more increasing the penalties that are sought either by the Florida Bar or recommended by the referee, because the Court has expressed impatience with lawyer lack of professionalism and misconduct.

Professor Rizzardi:

Thank you Justice. Ms. Falcone, could you help elaborate on when does the Florida Bar discern between what the mere professionalism violation is when it's risen to that level of 4-8.4 and it's attorney misconduct and it's going to fall within the disciplinary process?

Ms. Falcone:

Certainly. I'd be happy to. If you woke up on the wrong side of the bed, and you're having a bad day, you're not going to get disciplined by the Bar. We understand that things happen, things become heated. If you exhibit a pattern of that type of behavior or your behavior becomes so egregious that it has to be dealt with within in the disciplinary system, it will be.

Justice Cantero mentioned the Supreme Court opinion creating the local panels, and apparently they have been very effective, because it gives judges and other litigants a place to go other than the Bar in order to deal with minor infractions. I think Judge Wolfson was talking earlier about how she has young attorneys in her courtroom all the time, and she'll bring them back into her chambers and discuss with them what's going on. Not all judges are as nice to do that. So these panels sort of take that role. They're not disciplinary.

Only the Florida Supreme Court can impose what we call discipline. That's actual action taken against your license. They're nonadversarial. They're meant to educate and redirect you. If after you have had the benefit of one of those panels, you're still engaging in what we would call disruptive behavior, then you're going to be crossed over to the Florida Bar.

There are several rules that come into play. It's not just 4-8.4(d). That one is the rule that talks about conduct prejudicial to the administration of justice. Basically, any courtroom behavior is going to fall under that rule. You're also going to see that rule in several contexts where you may have an aggressive, overly zealous beyond passionate lawyer who crossed the line into intimidating behavior, bullying behavior. Whenever you're limiting another parties' ability to speak or make their position known, you're going to be in violation of the 4-8.4(d) rule, whether it's in the courtroom, or in your e-mails, or in depositions.

Judge Rebull was talking about that, his case was the *Ratiner* case, which is famous. If you haven't heard of it or read about it in one of your classes, you need to look at it. That's the one I believe you were referring to when it says this is an example of how not to behave, and we think every law student and every new attorney should have to view a video of his deposition. I don't know about you, but I never want to be the poster child for how not to behave.

So you want to be careful that you're never showing up in one of the opinions, but we also have other rules that could be impacted, it's 4-3.5, which is disruption of the tribunal. I've prosecuted several cases where an attorney just refuses to accept a ruling, keeps interrupting, keeps arguing with the judge, won't let the judge move on. That's disruption of the tribu-

nal, an attorney who's acting up in front of a jury, throwing things, making loud noises, kicking the table, throwing exhibits, things like that. That's disruption of the tribunal.

So while some people might want to look at that as a civility type issue, a professionalism issue, it actually crosses the line and violates a rule regulating the Florida Bar. We also have 4-4.4(a) and that's that a lawyer shall not use any means that have no substantial purpose other than to embarrass, delay, or burden a third person. So that's getting into those deposition issues where your harassing or intimidating opponents, where you're hiding exhibits, where things are going on that are just burdensome and harassing.

3-4.3 is our catch-all rule that basically says, just because we haven't thought of every way you can violate the rules, if you're acting badly, and it is in a manner that is unlawful or contrary to justice or honesty, then you're in violation of the rules. So basically, any of the conduct that we're describing here can rise to the level of one of these rule violations if it's a pattern or if it's egregious enough.

Now, having said that, if it's a first offense – and I'm a huge fan of the *mea culpa*, you come to me, or any Bar counsel, you come to us and you say, "Look I made a mistake, that was a really bad time in my life, I was going through a divorce and I don't know what I was thinking, but I never should have written that e-mail, I'll never do it again." You're going to get diversion, and diversion basically it diverts you out of the discipline system. You're not going on the discipline track, you're going to be in that professionalism school that we were just discussing, or an ethics school, or taking CLEs, or something like that.

Once you've done that, the case is closed, it goes away, there's no stain on your record, you haven't been disciplined. If we see this three, four, five times, you're going to be out of that system and least getting – what used to be, probably when you were on the bench, Judge, it used to be a public reprimand. It used to be considered a not very serious violation. Maybe, if it was your second or third offense, you would get ten day suspension, something like that. The Court today, that sits there now, has a very different view.

They've said over and over again, they will not be bound by their prior precedent when they believe more serious discipline is warranted. So they've thrown out the whole *stare decisis* thing. They're not going to be bound by public reprimand because another person who acted badly got that ten years ago. They've sent every message to law students, to new

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lawyers, to old lawyers, that they're not taking this lightly anymore, and that you act badly at your own risk.

So they passed a new oath of civility, and while the Florida Bar, myself, I cannot prosecute anything that not an actual rule violation, we now have the ability to prosecute violations of the oath when it comes to civility. So that's now part of the rules that you can be prosecuted for an ethical violation just for behaving uncivilly in your oral or written communications. So they passed that. That didn't get it done. Apparently people were still misbehaving.

So, in 2013, they created the panels that we've been discussing hoping to alter behavior before it came into the disciplinary system. Short of that, their only recourse is to go to serious discipline. So, somebody like Mr. Ratiner, who has been before the court on numerous occasions, he's now suspended for three years, and his third appeal is now pending. It's probably going to be disbarment, because they always elevate the conduct up.

Mr. Norkin who we also just discussed – and if you aren't familiar with these decisions, you should definitely go and read them, these are really all about bad behavior. That's what these lawyers did, and they did it over and over and over again, and they disrupted the proceedings. Mr. Norkin wound up with a two year suspension, and the Florida Supreme Court went to the extra length of calling him in beforehand, making him stand there, and reading a public reprimand to him.

That wasn't sufficient to cow his behavior, however, he stood in front of them making demeaning facial gestures and basically showing abundant disrespect for the Court. He wound up permanently disbarred. So, if you're thinking that this is not something that is that serious, that this is pie in the sky, law school theoretical stuff, it's not. You are a professional, and you must behave professionally.

Our system cannot tolerate people who disrupt the process and basically inhibit justice because of their behavior. Does that answer the question? I go off on tangents, so I'm sorry.

Professor Rizzardi:

I think you've scared, Mr. Greenberg. See, he's got the task of trying to train his lawyers to try and stay out of trouble in the first place, and not to engage in professionalism breaches and ethical breaches. So, from your experiences in the firm leadership, what are the most common types of unprofessionalism and incivility that you've seen, and that have attracted

your attention as a supervisor where you focus and train and mentor your young lawyers to deal with it?

Mr. Gerald Greenberg:

I think that a lot of what we see on a regular basis in the actual practice is, it's the little incidents of incivility or civility for that matter that add up. Things that would not on their own, ever come to the attention of the Bar or to a court, because it's not worth it for anybody to start going down that road. It typically gets uglier that way. And there are things that probably the other side or the person doing it could justify in some way.

Either with that phrase that I hate, which is zealous advocacy, or by saying, well there's no rule that precludes this, or something along those lines. So, I've been fortunate not to see too many egregious examples of the really bad stuff, although, I did have a case with one of the people you just mentioned, and was not shocked to see the result from the Bar. It was not you, although we did have a case with each other, and it falls in the example of the good stuff, which is far more often what we see is the civility.

I always tell lawyers that I'm working with, once you get on a case, you're going to be, especially on the civil side, you're going to be dealing with, working with, living with that person for the next couple of years in many ways, because cases take forever, as we all know and there are so many things that could happen. So, any fight that you could get into, anything is going to come back. But more fundamentally, I always tell people from the beginning get to know the lawyer you'll be working with.

One of my partners always makes fun of me because he'll find that – how come you always know your opposing counsel's kids' names? How come you always know everything about them? Because it really makes a difference. First of all, because you're going to be with the people, you're going to be spending time with them. But once you have a personal relationship with someone on the other side, it's very hard for it to devolve into the really bad stuff if it does, or if it does, and it happens, there's a bad moment, it's much easier to come back around.

The other thing is, you're going to see these people again. Maybe not on a case, but you're going to see them at lunch, you're going to see them on a panel. You're going to see them somewhere. In the case, as Judge Rebull mentioned, he and I were opposing counsel, then a couple years later I had to appear in front of him. Think about that. An example of one of the small incivilities I've seen recently, I have a case that's been going on

in some form or another for over a decade. It's now in arbitration, really it's more than a decade.

Nothing really set, at some point, our client representative developed cancer, and we had a deadline coming up and we asked the other side for a little bit of time. A couple of weeks because we at least need to figure out what's going on and they said no. They of course said, it's not us, it's our client, we would do it. Come on, you can stand up to your client here.

That's the sort of thing that I don't think the Bar or a court would say, well you shouldn't have been a jerk to use the phrase, I had a different word, but I won't use it here. Those sorts of things are really what can poison a relationship and poison the profession. So what I tell lawyers who I'm working with – first of all, the key is when you're hiring somebody you know pretty quickly if they're going to be that kind of lawyer, because generally you're the same kind of litigator that you are as a human being outside of court.

So, if the person looks like they're going to be difficult to opposing counsel, difficult to courts, difficult to whoever, I don't want to work with them. I think the key, and I think Paul used the phrase in the earlier panel, is control. You have to be able to keep control of the situation, this is what I like to tell people, and I like to remind myself. There's going to be moments when it gets bad. You can't fire off that email right away. You can't fight fire with fire every single time, or really any of the time.

You need to pause. You need to think about what you're doing and unfortunately most people work with some form of partners, and if not, presumably you have friends or family or someone you can go to. Use that. If I have an opposing counsel like when this incident happened in December with the ill client, I went in and complained non-stop to my associate, I'm sure he really enjoyed that. But nonetheless, I had somebody I could talk to about it. There's no point in firing off the angry email. There's no point in escalating it, because it's going to come back and hit you.

Another piece of advice I like to give them, and it goes along with that, is maintain your sense of humor. If these people are going to get this worked up, and this is how they're going to be, that's on them. You just can't – we all have lives, all of our lives are too short, you can't spend time fighting about these little things, and quite fundamentally it doesn't help anybody. If you're going to turn this into a personal battle, and you're going to pick these little fights, especially if you're talking about hourly work, the client's going to pay for it.

That's not in anybody's best – I guess some lawyers might think that's in their interests, but most good lawyers have enough work they

don't have to worry about these things. The client is going to pay for it. If it's not a case where they're paying hourly, what are you doing it for? It takes on a life of its own and never advances the ball.

If you're going to win the case, you're not going to win the case by acting like an idiot, you're going to win the case by doing your job as an attorney. I think it applies also in – one of the things I've found with lawyers is, people know not to say something to someone's face. I think people are learning try to watch what you say in an email. In written pleadings before the court, people sometimes feel the gloves are off, because maybe you don't have to see the person face to face. Now, yes, a judge might call you out on something, but I think people think, this is a place for me to be cute, for me to take the shot.

I think you're going to treat it like you're saying it to somebody's face. The last thing point on that, a key piece of advice that I always think it's important to give people – and again I'm repeating things that were said earlier, is pick up the phone. So often they'll be the back and forth in email, where you feel the need to complete the record or you don't want to leave something responded to, I get it. It's the practical reality of what we do. I always will then pick up the phone and call the person and see if we can deescalate.

I can tell you, I've never once failed in that situation. I've never had a situation with a lawyer where it's gone on and on for too long because you can always deescalate it. Most people feel the same way, a lot of them are just afraid to take the higher road and do it. You just have to constantly remind people. Stay in control, in control of yourself in control of your case, and then you'll control the situation.

Ms. Falcone:

Can I piggyback on that just a little bit? The stay in control of yourself advice is really, really good advice, because the Florida Supreme Court does not believe that provocation justifies any action on your part, and there is extreme provocation. You will be provoked. There's a case out just in 2010 where a lawyer who was severely provoked, filed a Bar complaint, and provided all the email exchanges to the grievance committee, and it went through the process.

They disciplined the provoking lawyer with a ten-day suspension, however, they also disciplined the lawyer who provided the emails and filed the Bar complaint, because he did not take the high road and reciprocated in kind. He got a public reprimand. So, don't think that just because you might be the good guy in the scenario, that's going to let you off the hook if your behavior also begins to escalate.

Professor Rizzardi: Great point. How about questions from the audience?

4th Audience Guest: How do you handle it when your client wants you to be aggressive?

Mr. Gerald Greenberg:

It's a great question, and it's something I think about a lot, because sometimes I do wonder am I being as effective as I could be in some of these situations. One answer, and it's the easy answer, which is what I try to live by, is if it's not – if a client calls, and this happens a lot, if a client calls, and says from the outset, I want a real bulldog in this case. I want somebody who's going to take no prisoners, who's going to make it personal. I say – first I try to pawn them off on one of my partners, who may be willing to do it, you know them both so you can –

But seriously, it's a tough decision, because you need, especially in the small firm atmosphere, you need clients, I would just say I'm not the one for you, let me give you some names of people. So that's when you can do it at the outset, because they are going to want me to do something, or act in a way that I'm not comfortable acting.

And again, I'm not talking about the one – and I've had clients do this, well pretend I never gave you that document, pretend it doesn't exist. That's the easy one, it should be an easy one, because you're not going to do it. You're not going put your license or ethics on the line, or yourself for that. But it's these other ones where they want some level of incivility sometimes – it's a very fine line. You have to explain to the client I will fight the point, I'm not going to cave in on your issues.

We'll go to court on this if we have to, but that doesn't mean that we have to yell and scream and make it personal. Most clients I've had, I can't really think of any exceptions, ultimately come to appreciate the value, because most cases settle, so you're going to be in much better shape for that if you've had a human relationship. They also realize it's going to cost them a lot more money if they want us to have 4,000 emails going back and forth. And I've often found that the higher the stakes in the case, the more people understand that. They understand, because nobody's going to win by acting that way.

Mr. Lipton I was discussing earlier also was what the concept of the intent of civility and professionalism? The intent is to hide the ball or to frustrate someone so much that they're not going to argue a point or the judge is going get frustrated and say this hearing is over.

And the truth does not come out, and therefore the unprofessional conduct that doesn't rise to the level of an ethical violation, is in fact denying the truth to be accomplished in the courtroom. So I keep on thinking that we're not treating it with the dignity that it has to be treated with, that the consequence is to deny truth and justice.

Ms. Falcone:

I absolutely agree, 100 percent. I actually have two cases that I'm prosecuting right now where that is – it's a tactic, it's strategic. These are people who are very nice, or at least one of them is very nice to me outside of the courtroom, and then by the pleadings and by the courtroom arguments and things like that basically frustrates everybody to the point where you just don't want to litigate the – you say okay that's not going to be worth it, we'll just pass on that issue and go onto the next thing. The whole purpose of the litigation of a trial is supposed to be to get to the truth and the right result.

So anything that obstructs that process is a violation of the rules. We would consider that a pattern of behavior. One instance is almost never going to get you disciplined, a pattern will get you on the Bar's radar. That's really the distinction of what you were asking me earlier of what's really just a professionalism issue, and what's an ethical issue that can be disciplined by the Florida Supreme Court.

Professor Rizzardi: One last question. Yes sir?

5th Audience Guest:

Thank you. The esteemed gentlemen in the stripped tie mentioned some things about clients, and the attorney and client and the relationship where the client is expecting you to be this "berserko" being with the other attorney. And going back to the previous panel, you're in a situation in a courtroom and it almost always happens at motion practice where you spot your opponent lying to the judge.

Maybe sometimes it just so happens that the motion that you're arguing has an attachment to it that proves that the guy is lying, but the judge overlooks it and it's understandable, they want to get to the root of the issue. Motion practice usually – the things that are occurring may not even have an impact on the trial, when it gets to that point.

But then you get to the point where that's getting back to your client, and now the potential for irreparable harm done to the attorney and client and their relationship. At what point does that become I can no longer represent you?

Ms. Falcone:

I would just deal with that from a perspective – no case, no amount of money is worth your ability to make a living continuously. I can think of two or three cases you can look at off the top of your head. Rosenberg and Bischoff where an attorney in discovery at motions practice, at his client – both of them made the defense that this is what their client asked them to do or this is the track the client wanted them to take. They wound up with over a year suspension, or at least one year in one case and over a year in the other.

So you can listen to your client, and you can follow your client's dictates if you so choose, but you could lose your ability to practice law if your client's urging you to do something you know is not proper.

Mr. Cantero:

I've had an experience more before I got in the court with clients that have wanted me to do things that I considered either unethical or unprofessional or uncivil. And I've told a client I'm not going to do that, and the client could have fired me but the client said ok we won't do it. Because if the client really wants you as a lawyer, if you are an effective lawyer, the client will accept you the way you are.

When clients come to me and say, like Jerry said, they want a bulldog, I tell them, you don't want a bulldog you want an effective lawyer. You want the lawyer that's going to give you the greatest chance of success, and in my experience the bulldog doesn't give you that chance, and that's why my style is not the bulldog style. My style is an advocate, I'm a competitor, I want to win, but I'm also going to be civil and professional and cooperative with the other side, because at some point we may want to resolve this case.

The more we get along with the other side, the greater the chances we're going to get along. Usually I use sports analogies where you're fighting on the field, but if your opponent falls on the ground you pick him up, and then you tackle him again on the next play. But, it gives you the greatest chance of either resolving the case, or if you don't resolve it of winning it in a way where the field is not totally on fire because of what everybody's done.

Also, you're going to practice this profession for a long time, and you may have, or may not have read articles on lawyer burn out, and how some lawyers hate their profession. I love my job, I love what I do, I want to keep doing it as long as I can. I'm 56 years-old. I've been practicing law for 30 years and I really enjoy it, but I think one of the reasons I do enjoy it

is because I haven't let those kinds of things get to me. I haven't become that kind of lawyer. So I still have the personality, and the life style, and the demeanor that I started with, that I wanted to keep, and I didn't turn into a monster just to win a case at all costs.

Professor Rizzardi: Thank you to the panelists.

Armando Hernandez:

Moving onto our next panel which is entitled: Active versus Passive Enforcement of Professionalism. I think this panel is really kind of like a catch-all for the day. We're going to be covering various different topics. I think that the really unique aspect of this panel is that we've got some really seasoned attorneys who have been in the trenches, seen this day in and day out from a different perspective than we've covered in the earlier panels. Aside from an enforcement perspective or a judicial perspective so I'm very excited to be moderating this panel. I ask that we begin with Mr. Benjamin Greenberg, if you don't mind introducing yourself, and then each of you just share a little bit about your practices, your background, and any other comments you'd like to make. Start off.

Mr. Benjamin Greenberg: Sure. Thank you and good morning. I'll start, just to echo my brother's sentiments, just to thank you all for putting this together, and for the comments that Dean Garcia said about my father earlier. I have been the acting U.S. Attorney for three and a half weeks, I guess almost four weeks, who's counting? Prior to that, I served as the First Assistant U.S. Attorney for a previous U.S. Attorney, Wifredo Ferrer, and have been in the office since 2000.

Before that I clerked for a judge in Memphis, Tennessee. I graduated from Georgetown Law School, and I'm happy to be here.

Mr. Cuevas:

Hi, my name is Bob Cuevas. I practiced 45 years in the County Attorney's office. For 37 of those years I got to practice with Ben and Jerry's dad, in the office, Murray Greenberg. It was a great honor and a great privilege. A lot of what that office stands for is because of the work that Murray did, and this community is very fortunate to have that. In addition to being in the office 45 years, I was the County Attorney. I retired in October of 2015.

Mr. Ginsberg:

Hi my name is Marc Ginsberg, and I guess you'd say I'm the street lawyer of the group. First generation college in my family, first generation law school in my family. Practicing 37 years. Board certified in civil trial law. Super lawyer. AV Martindale Hubbell rated.

I'm one of the original members of the professional panel, with Mr. Hernandez, and we have actually heard the cases that come before the professionalism panel. I asked to be on that panel because I thought it was important that solo practitioners, lawyers who don't get the opportunities to start at a big firm, need to be represented on the panels, and also need the education tools that the panels can offer.

So we practice professionally, we're respected and as solo practitioners the results we get are equal to, and in my case hopefully better than the result of the big firm lawyers. So I'm here with that perspective for you all.

Mr. Hernandez:

Well put Marc. So we heard Paul Lipton talk earlier about Cicero's definitions of active and passive versus passive injustice. And how in his opinion, and I tend to agree with him that, passive injustice can be equally if not more dangerous than active. Could anybody on the panel just give me some examples of the active versus passive dichotomy in your experience.

Mr. Ginsberg:

Well I see it regularly. I see passive regularly. Passive is, we've heard the email issues. We on the panel had an email case that came before us, I'm talking to Armando, one of our first professionalism cases, was an email case. The lawyer who presented the case, who was bringing the professionalism complaint, was charging that the other lawyer's emails were unprofessional.

You read the chain of emails, and they went on for months, and you wonder how did these guys let this go so long. So that was passive. Finally it got a level where they did something about it, it could have happened at the second email. So that would be a concrete example of passive in the context of a non-courtroom setting.

Mr. Hernandez: Any other examples?

Mr. Cuevas:

I was thinking in terms of passive enforcement if that's something you want to talk about. It's more from my perspective as a local government attorney. Certain things about the context of that practice really do sober and instill in you and how relate to your fellow lawyers and court system many of the principals and ideals that the Bar has enunciated in the professionalism guidelines.

And those contexts are driven by the Sunshine Law which is the Open Meetings Law, which basically says what your advice you give is to your governing board, and when they're in session, that's a public meeting, minutes are taken and you're giving your advice in front of God and every-

one. The other aspect of public practice at a local government level is the Public Record Law.

What that says, is that basically anything that you write, be it written, hard copy, or electronically, that is a public record, subject to any members of the public having copies of it, the press, the media, whatever. Those two aspects make your practice as a public government lawyer – you practice in a fishbowl. You have to, and we had to remind our lawyers and remind each other and hold hands that what we say and do, not only matters, but you could see it on page one of the Herald. You can read about it – you could hear about it from the court, because judges come and talk back to the County Attorney telling him or her what issues they see.

You could also have complaints from citizens who feel that your conduct or activity – or from fellow lawyers, is enough to warrant them. And if you think going before a Bar panel is something, have someone come down to your client, your collective board and tell them that you've acted unprofessionally and uncivilly in your representation of their government. And treated a citizen or their lawyer in their court improperly. So those are passive ways in which these ideals are very real.

That you feel them as a public sector lawyer, and that you have to instill and make sure that you act in accordance with those.

Mr. Benjamin Greenberg:

Just to pivot off something that Bob said, I think that also speaking as a government lawyer, professionalism and ethics matter for all lawyers. I think that's one of the points that we've heard repeatedly today. In many ways, it is an asymmetrical relationship. What I mean by that, is that what we try to do at the U.S. Attorney's office, and I know it's the same at the County Attorney's office, is to really demand that no matter what the other side does, we hold ourselves to the highest possible standard.

In the criminal context, for example, the majority of what we do, there is a difference between the ethical obligations and abilities and requirements of a criminal defense attorney, then there is of a prosecutor. I think Judge Wolfson mentioned this earlier too, that it doesn't matter what someone else is doing on the other side, you have to, in my view, play – active enforcement is much more important.

And I don't mean in terms of calling out the other side, that's a separate issue. But in terms of your own conduct, I think actively enforcing the rules for yourself, and holding yourself to that higher standard as a government lawyer. I think that as some of you hopefully become public lawyers that you remember that. In terms of actively calling out the other side,

it pains me to admit this, but I think my brother had a good point, which is that often times it may not be worth it. Before you're going to take it to the judge or before you're going to take it to the Bar, think long and hard about that.

Just as that person may have been having a bad day when they said or wrote something that is unprofessional or improper or is misconduct of some sort, don't jump right in. Maybe you can sit back and you don't have to have everything resolved at a high level because you want to be active, but you also want to give people the ability to make mistakes and have bad days.

Mr. Ginsberg:

Can I make an additional comment? I think the dichotomy at the table shows to the students in the room, what I was trying to talk about. When you come from the structure and the public sector such as the County Attorney's office or the U.S. Attorney's office, or you come from a large firm where there's a culture already in place, it's probably much easier if you are fortunate enough to get a job in one of those areas to become professional, learn professionalism.

The truth of the matter is that at least some, if not many of you graduates, are going to work at small firms or be forced to go into solo practice for various reasons. And the question becomes how do you all be as professional in your dealings, and be on the same level with Mr. Greenburg, Mr. Cuevas, Justice Cantero, Mr. Greenberg's brother, or Mr. Lipton, so when you're in litigation together you are given the same respect that those lawyers are getting. Not only from courts, at the trial level, but at the appellate level, and amongst your peers.

So it's extremely important that you get that in your souls now, so that when you do get out there, you have it ready and you will be able to reach your maximum whether it's in a big firm or on your own.

Mr. Hernandez:

I'd like to piggyback off an idea that Mr. Greenberg was talking about, and I think it brings to head a lot of what we've been talking about here today: attorney on attorney reporting. I feel that it's such a gray area where there's going to be a reluctance. There's the so called snitch factor, I don't want to be calling somebody out on something. There's also the idea that you better have clean hands if you go there.

Cases that Marc and I have worked on where there was a lot of bad emails that escalated to a very high point, but when we began to dig, we saw that it was a two way street in terms of the emails and the improper

comments in there. So could you kind of shed a little bit on those fears, those concepts, that reluctance, and at what point do you take action?

Mr. Ginsberg:

Well I've been involved and what we ended up doing was what I'll call the Lipton remedy. We told the lawyers to go have coffee. Right? We said go have a coffee and come on back. This was after they had their whole fight, because the case was still in litigation. We looked at them, the three of us on the panel, looked at these lawyers and said you're both competent lawyers. I remember the one's guy's problem was that he had an office in New York and an office in Miami, and scheduling problem, and the other lawyer was trying to take advantage of him when he was in his New York office not his Florida office.

Then there were some issues about doing something on a Friday, and one guy claimed to be religious, a Jewish thing, and it was just getting really, really ridiculous. I said, look, go get coffee, come back, and then we'll talk about it. They had a mea culpa between the two of them, and I don't know what ultimately happened from the case, but my guess and my suspicion is that they became somewhat friendly. They weren't going to be best friends, but at least they became cordial to one another.

So the snitch factor, let's talk about that. There shouldn't be the same snitch factor in reporting somebody to the professionalism committee as there is in maybe making a Bar complaint against him. You have an opportunity as a lawyer to put the unprofessionalism to them before you take that step. Not everybody is aware of the guidelines. I make it a practice with all my opposing counsel if not send them the guidelines, make them aware of the guidelines at the very first introduction.

And I let them know that I'm going to be using the guidelines as part of my litigation strategy in the case, so they better make sure that they're going to be abiding by it, because otherwise they'll be cited in various motions and pleadings along the way. So if you're upfront with them, I think they will know about that, and so they will know that you're going to be making the complaints. So you shouldn't have any qualms about making a professionalism complaint, provided you first tried to resolve it upfront on your own first without success.

Mr. Hernandez: Anything else you want to add to that?

Mr. Cuevas: Again, this is my perspective which may be a little atypical from the average lawyer. As a public sector lawyer to make a complaint against a fellow Bar member, that is something you're very, very hesitant to do. I would always counsel our lawyers, you need to keep your

eye on the ball. Try the case on the merits and not get sidelined, because in doing that you spend a lot of time and effort that could be more usefully spent, hopefully, to present your case, be a more effective lawyer.

I was always hesitant, personally, that as an Assistant County Attorney or County Attorney to come into the Bar and say I have a complaint about a fellow lawyer. I couldn't take off my public position and just say I'm another lawyer. I didn't feel it was fair to have the sense that weight of the county or the public sector was somehow behind whatever complaint I may have had, as legitimate as it may have been. But that was just my own personal philosophy on that.

Mr. Benjamin Greenberg: It is exactly the same for us, and that somewhat is at odds from what we've heard from some of the speakers today, is part of the problem. If you just stand back and do nothing that it may make it worse. It goes back to this asymmetric nature of the relationship, and I feel exactly as Bob did. I especially feel that way in criminal cases. For us, for example, the Department of Justice to even contemplate referring a lawyer, we have to send it to D.C. to our office of professional responsibility. It's a – for a lot of the reasons that you said. So I don't think that it's happened.

Now the question becomes what do you do about it? It's hard. We had a situation recently where some of our lawyers were just getting attacked viciously in a case, wrongly in my view, and they wanted to – they were thinking about wanting to report this, and we had to say no.

You strike a balance that you don't want to be unsupportive of the lawyers in your office. You don't want to encourage that behavior on opposing counsel, but, I think Bob's point about this feeling that you want to be careful about bringing the weight of the government, whatever government that is, down on a lawyer as a piece of a particular litigation is risky.

Mr. Hernandez:

I'd like to move onto another topic which is and we'll kind of wrap up here: a lot of sentiment was provided by Marc with regards to mentorship and how that can vary depending on what segment of the practice you're going into. I, myself, benefited from a very structured mentorship program at Rumberger. I'm sure that County Attorney's office focuses heavily on mentoring, as well as the U.S. Attorney's office. I think it's a very sound point there's going to be a lot of individuals who don't have that benefit.

I think that having dealt with some of the local complaints that we've dealt with in the local panels, we've seen individuals who have come before us and said this is how I learned it, and I didn't think that there was

anything wrong with it. So to the extent that you could provide mentorship to the audience, and just in general core tenets that you think really go to the heart of it as concretely as possible. I think it'd be a great benefit for the audience.

Mr. Ginsberg:

Sure. The Dade County Bar and our committee, the professionalism committee and panel, we have a program called the Mentoring Committee and Panel. We have a lunch and learn series where we help you learn about professionalism. We'll be including other topics in there. We do it down at the court house. It's a free seminar, and I welcome and offer anyone to sign on to the Young Lawyers section of the Dade County Bar Association. Whether or not you are yet a lawyer, I think they have a student division as we do at the Miami Lakes Bar Association, and you can receive notification of those things.

There's also, the Florida Bar offers an actual mentoring program which I am a part of where I receive phone calls, probably two or three a week from lawyers who have issues. Whether they be issues about how to handle a particular product liability case that they're not familiar with or a medical malpractice case. So there are resources available for those who aren't in the structured environment, although you have to proactively go out and search for them. They're not going to come to you. You have to really want them and you can find them.

I can assure you all there are many selfish solo practitioners, there are also many unselfish solo practitioners who will give up their time and attention, because in my case my favorite show was Perry Mason, and that was the lawyer I remembered. Now you look at Suits, and it's just not the same. I would like everyone to be lawyers of a more gentlemanly and lady-like profession than what I see customarily.

Mr. Hernandez: Thank you Marc.

Mr. Cuevas: I don't know if I can respond directly to what you were suggesting about mentoring, but the topic we're all discussing is professionalism. We focus almost exclusively on our relationship vis-a-vis other lawyers, clients, and the judicial system. But I will tell you nationally, in the literature of professionalism there is another aspect of professionalism and many would say it is that aspect that truly makes the practice of law a profession. And that is the ethical consideration to society at large.

The professionalism project at Harvard Law School Center for Legal Profession is coming out with an essay called Lawyers as Professionals and Citizens: Key Roles and Responsibilities in the 21st Century. They define

four ethical responsibilities that we have to our clients, to the legal system, to the institutions we represent, and to society as a whole.

Their thesis is that all of these four ethical responsibilities should be at least considered in every action we take in our professional capacity. I believe that aspect of ethical responsibility to society at large that lawyers have is what the Bar means to capture in its initial ideal that they mention in their publication where they say, “The license to practice law is a privilege which gives a lawyer a special position of trust, power, and influence in our society.”

This privilege brings corresponding duties for which the lawyer is accountable to the public and one of which they cite is to promote the public good. So I think that is an aspect, maybe from my perspective as a public lawyer, is something that is also an important element of professionalism, because it does deal with how the rest of society values us and sees us, and the worth we bring. Which is fundamental to what this country is about.

Mr. Henandez: Thank you.

Mr. Benjamin Greenberg:

Just briefly, and again, speaking from a public-sector perspective, you always have to remember who your client is. You’re now bored in this short time of hearing me say it, but when you’re in the public sector, our client is the people of the United States, the people of this community, and that includes everyone, period. That’s who the clients are. That’s when you go into court and you write something, or if you talk on the phone, I think if you remind yourself that that’s who you represent.

That you represent the public. All of the public. You can’t just do it if you represent part of it, or you think you represent part of it. I think if you always have that in your mind, you’ll be better off. The one final thing that I’ll say in terms of how to help yourself, whether you have a mentor formally or informally, and I think it can sometimes be informal, there are always people you can find that you emulate. You have it with professors, you have it in most contexts, that you want to be like, and those are great, really important relationships to have.

But if you’re going about your business dealing with opposing counsel, it’s very basic, but just remember that you really always have to see things from the other side. That’s what will make you a better lawyer analytically, for sure, but it will also make you more professional, a more ethical type of lawyer if you can at least understand that there are two sides to most stories. You need to remind yourself, not just when you’re talking about the facts of the case, but when you’re talking about interpersonal

things. I think that goes a long way.

Mr. Hernandez: Just to piggyback off of Ben's idea, one of the best compliments I've ever been paid by anybody at my firm is that I'm truly a plaintiff's lawyer at a defense firm. I say that to say this, that I really do see the merits to the other side. I get their justice. I get their truth, but I also have the justice and truth that I have to fight for. I think that when you don't drink the proverbial Kool-Aid, and you really do see the issue in a balanced fashion, it cuts out – it really allows what Robert was talking about, which is that the case gets tried on the merits, not on the nitpicky discovery disputes that serve as a catalyst to so much of unprofessionalism that we see.

On that point, any questions for our awesome panel that we've got here?

6th Audience Guest:

I'm an appellate attorney, and it just so happens that in the last month, I've had three different cases where the gotcha tactic of "let's see how we can trick up the plaintiff into saying or omitting something that then I can immediately file a motion to dismiss for fraud on the court." That seems to be a new tactic, where I always used to be amazed where someone filed a complaint and then I would immediately have to deal with a motion to dismiss, where the motion to dismiss was very evident that the defense attorney had not even read the complaint.

It just seemed to be an automatic thing to do. Wouldn't that fall under professionalism? Also the same thing with the motions to dismiss for fraud when the guy said, "Yeah I wrenched my knee when I was in high school, and maybe at another time when it was raining I banged it on the car door, and I had a knee pain." Then later on a few years later he went to the doctor and he said, "Yeah sometimes my knee hurts." And they're using that to say you didn't disclose a prior injury. It's stuff like that that I find – I would say that that is unprofessional.

Mr. Hernandez: I think that raises a good point, that sense of misusing tools that are available to you is how I interpret that question. Anybody on the panel?

Mr. Ginsberg:

That falls into my [bailiwick], so to speak, I've had that argument that defense raised on occasion. First off, there are a number of clients who intentionally misrepresent facts and, you're the appellate lawyer so you aren't privy to the deposition preparation, the extent of it, and perhaps the deposition preparation of the plaintiff for that deposition contributed to these

number of flubs that are created.

So, I do know that in my world of litigation, many carriers insist that these motions be brought if there's insurance involved, and they insist that these motions be brought. So if there is a good faith basis to do it – in the ones your describing, it sounds like they should be summarily denied, if that's miniscule. But that's the price that plaintiff lawyers pay, especially if they have not adequately prepared their clients, and they have adequately gone over interrogatory answers, and disclosed all that prior stuff.

For example, the question becomes, a guy may come into your office and you say, what other prior injuries do you have? And he starts telling you a bunch of stuff, well I sprained my ankle when I was 11-years-old, I went to the family doctor, but I only missed a week of school, and I went back to school. Disclose that. So what do you disclose and what don't you disclose? You have to agree upon an injury. What is an injury for your answer to the interrogatory? You could define yourself as an injury in your answer, by saying an injury – I was interpreting this question as an injury is something that required medical treatment, of a nature more than an initial visit. Then you avoid some of those problems. To me, it's not unprofessional, to me it's pushing the envelope, to an ok level if you're the defendant and you flub. That's my personal opinion. I wouldn't rise to the level of unprofessionalism.

Mr. Hernandez:

I've had situations where I've had to evaluate a motion for fraud upon the court, or whether or not I file a 57.105, a Safe Harbor Letter, followed by a motion. There's varying schools of thought. I'm one who reluctantly resorts to that. I feel like if I'm going to push that button, it's Death Con if I'm going there. But that's just me, that's my restraint, a lot of the times I can just pick up the phone and sort these things out. Also, it's really good cross examination for the person who's had all of these inconsistencies. I think it's a borderline issue in regards to professionalism. Any other questions for the panel? Alright thank you so much.

Bernadette Guerra:

Good afternoon everyone, on behalf of the Law Review, I want to thank you all for coming here today. My name is Bernadette Guerra, and I am this year's Editor in Chief of the Law Review. Before I send you off to go pick up your lunch outside, I wanted to explain why we chose this topic, for this spring issue. Since 1L year St. Thomas has instilled in its students professionalism. I remember walking through those doors of the Moot Courtroom, and Dean Dykas telling me my reputation started that day.

Everyone was looking at me, and I remember Dean Garcia telling me, like he told some of our alumni, look to your right, look to your left, they might not be here when you graduate, but you'll be working with them. It's a lesson that is woven into the classroom, it's practiced as leaders in our student organizations and from peer to peer communications. It is a lesson of common sense, that always doesn't appear very common.

Thus, it only made sense to come full circle with a common thread that is among all of us. While I did not have the pleasure of meeting him, I know Mr. Murray Greenberg exemplified professionalism and civility. This is why this issue will be dedicated to him. His sons, Ben and Jerry, will write a foreword for him in our issue. So, I encourage all of you to keep an eye an out when our issue comes later this semester. While it took a village to put this event together, I do have some folks I would like to recognize.

Mr. Paul Lipton, thank you for your guidance in shaping this event. To Armando and Professor Rizzardi, thank you for your thought provoking questions to shed light on some important dialogue. To our esteemed panelists, thank you for taking time out of your extremely busy schedules to share your experiences with us. To our sponsor, Rumberger Kirk & Caldwell, thank you for the food. To Professor Kravitz and Mickey, thank you for your support and efforts considering the stress we endured. To our symposium director, Brian, thank you for taking on this challenge with us.

To my managing editor, Claudia Capdesuñer, thank you for not killing me when you realized how much work this was going to take. Finally, to Jose Rohaidy, our Article Solicitation Editor this year, thank you for securing our speakers and making this event possible. This day is a celebration of our profession. May we always remember the civility that we owe to society, to the court, to the clients, and to each other. Thank you.