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COMMENTARY

'Good' Is Better Than 'Best'

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To a lawyer, there is no more genuine compliment than to say he or she is "a good lawyer." Those words are simple and understated, but their value cannot be overestimated.

Magazines and journals catalogue "super lawyers" and "bests" of this and that which fail to meaningfully inform the general public. The truth is the term "super lawyer" is gimmicky and somewhat less than dignified, and, besides, there are too many good lawyers to declare some amorphous few the "best."

As a lawyer for a quarter of a century, a judge for 15 years, and now a mediator, I have dealt with many, many good lawyers and a few not so good. My comments about good lawyering are not about trial performance in a single trial, but rather about the qualities a good lawyer has, day in and day out, over a career interacting with fellow lawyers and the courts.

There is no single style that makes a trial lawyer good; some are flamboyant, others low-key, and neither style is inherently good or bad. In addition, winning or losing a single trial proves nothing. The better lawyer does not necessarily win. For a decade while presiding over civil trials, in thanking the jurors after the verdict, I found that many times they actually praised and preferred the trial skills of the losing attorney.

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So trial skills alone don't make a lawyer good. Nor does brilliance. Rather what counts are certain traits over time that collectively comprise an attorney's reputation and benefit all of his or her clients, not just an individual one. To use a bit of alliteration, they are candor, courtesy and consistency.

It is only the occasional case that reaches trial. Most resolve beforehand, whether it be because of a motion or a settlement. Throughout that time, it is the lawyer's task to be a proponent of the client's case. In doing so, the lawyer necessarily interacts with litigants, witnesses, lawyer adversaries, court staff, law clerks and judges.

Being candid with and truthful to others benefits all the lawyer's clients. In response to the Court's inquiry, acknowledging a fact, though adverse, is the right thing to do and is "good lawyering." Espousing evasive half-truths is lying by omission. A half-truth is just a lie masquerading as the truth.

As a judge I respected the lawyer who forthrightly acknowledged something adverse, and still went on to successfully advocate for his or her client.

Being courteous, while having nothing to do with intellect, is another valued trait. It takes little effort to just be nice to people, and it has real-world practical benefits. A courteous lawyer usually gets the needed postponement or achieves the settlement. Rudeness simply begets rudeness.

Consistency is the third trait, and as a trial judge I valued lawyers who exhibited it. A good lawyer should have a consistent

philosophy and standard of practice. And if he or she did, I respected that attorney, regardless of whether I agreed with the argument.

The New Jersey Supreme Court's best-practices procedures is one area where such differences of philosophy often occurred. As a judge, I did not strictly apply best practices. For example, my philosophy was that if good lawyers, without sacrificing their clients' interests, needed a discovery extension, I would grant it. To me a strict, statistically based application of the rules was not always "best," let alone good. As an aside, I never liked the self-proclaimed title of "best practices." Something less strident and rigid would have sufficed.

While many lawyers who appeared before me were "good lawyers," I must single one out. Not because he was the "best," because to my mind there is no best. Rather, because philosophically the lawyer and I had different points of view about best practices. This lawyer would use best practices as a sword and file motions to dismiss his adversary's complaint or answer for the most minor of deviations, whether his adversary was a lawyer or a pro se. Almost invariably I would deny his requests.

This lawyer exemplified "consistency." He accepted the ruling graciously, but invariably was back before me from time to time seeking similar relief in other cases.

Obviously he had a consistent position on discovery issues he continued to assert. But he was consistent in the more important sense that in his practice he never failed to follow the rules that he wanted his adversaries to also comply with, unlike some attorneys who, on the

same motion day, would be defending a motion to dismiss for a failure to comply with a discovery issue while requesting that in another case. When that happened, I felt embarrassed for the lawyer, though

oftentimes that lawyer was impervious to embarrassment (or else he might have tried to list the motions on different dates).

I used the one lawyer as an example of “a good lawyer,” not because he was unique

or because he agreed with my rulings. He wasn’t and he didn’t. He was just one of those many “good lawyers” who appeared before me over the years. Thankfully, New Jersey has an abundance of them. ■