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ALMOST A DECADE AGO, IN A LAND NOT very far away, in the basement of 90 Washington Street in Hartford, I was arguing a contempt motion. I represented a mother in a post-judgment contempt matter. The contemnor-father was in arrears some \$60,000 of child support. He would go on to spend multiple substantial spans of time incarcerated as a result of the litigation.

The contemnor had counsel appointed on his behalf, and I was frustrated with what I felt were excuses being propounded on the contemnor's behalf. In my closing argument, I used the word "disingenuous" to describe opposing counsel's argument. As soon as I had uttered that word the entire dynamic changed. In my recollection, opposing counsel transformed from calmly

Two Points for Honesty

By David A. McGrath

making his argument to pounding on the table and raising his voice in an animated response, as though he were defending a falsely accused murderer. The magistrate, in front of whom this lawyer was a frequent guest, was taken aback and exclaimed that he had never seen this lawyer so incensed.

In retrospect, I understand exactly why the lawyer was so angry. By using the word "disingenuous" to describe his argument, I had attacked not just his client and his argument, but the lawyer himself and his honesty. To his credit, he has been nothing but civil, kind, and professional to me in every interaction since. I hope this column will suffice as a belated apology.

Several years later, I was farther away, in a different courthouse on a different case with a different opposing counsel. After the conclusion of an evidentiary hearing, the judge ordered counsel to make another attempt to negotiate a settlement during the lunch recess. It became quickly and abundantly clear that settlement would not be possible, and the judge would need to be notified that he would have to write a decision. I did not wish to wait an hour on the clock for my client in order simply to report back to the judge that no settlement had been reached.

Opposing counsel had other matters on the docket that afternoon, so I asked him, were I to leave the courthouse, whether he intended to report to the judge or simply alert the clerk that the case had not settled. He snapped at me, "Are you worried I'm going to tell on you?" In his next breath he told me that he would report to the clerk and would not see the judge. Notwithstanding his sarcastic initial response and the fact that, just minutes earlier, he had yelled at me that I was a "petulant baby," I took him at his word. My trust was not based out of any affinity for him. I trusted him because, regardless of the snark and ad hominem attack, he is a commissioner of the superior court. I do not have to like him for him to have earned my trust.

I like to think that I am not naïve,¹ I do not automatically trust salespersons, contractors, real estate agents, accountants, or members of many other professions to tell the truth or keep their word. They have to do the work of building a relationship and earning that trust. I do not take for granted that my clients are telling the truth and have withdrawn from representation when their failure to do so justifies it.

Lawyers, on the other hand, unless a reputation for dishonesty precedes them, have already earned that trust. Notwithstand-

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ing the notion in popular culture that lawyers are dishonest, precisely the opposite is generally true. There are a few attributes that set lawyers apart from almost every other profession—and I believe that the most important one is a real expectation that they will be honest.

This is an aspect of professionalism that the entire bar must work to protect. The news is presently full of prominent attorneys who have lied—lied through their teeth, lied repeatedly, lied with pants-on-fire, lied under oath, and lied to law enforcement. It takes the honest work of tens of thousands of ethical lawyers, working

honorably through arduous litigation and negotiation day in and day out, both when it is easy and when it is hard, to overcome the attention given to the famous bad apples and to protect both the reputation of the profession and the rule of law. It is hard work well worth undertaking. It is this work that makes being a commissioner of the superior court something to be proud of. Anyone who behaves in a way that loses the trust earned in becoming a lawyer injures the entire profession and is unlikely to ever regain that trust for him or herself. A reputation is hard to mend.

More recently, I was back at 90 Washington Street on a different matter. During legal argument, a different opposing counsel stated, “I don’t think Attorney McGrath is being entirely honest.” She immediately stopped and corrected her prior statement to say that she did not believe that my “facts were correct.” Thanks to that quick correction on her part, I had no need to pound on the table. ■

Notes

1. I also prefer to believe that I am not a petulant baby, but we all are entitled to our opinions.

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