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### 10 Things They Never Taught You in Law School

Penny White

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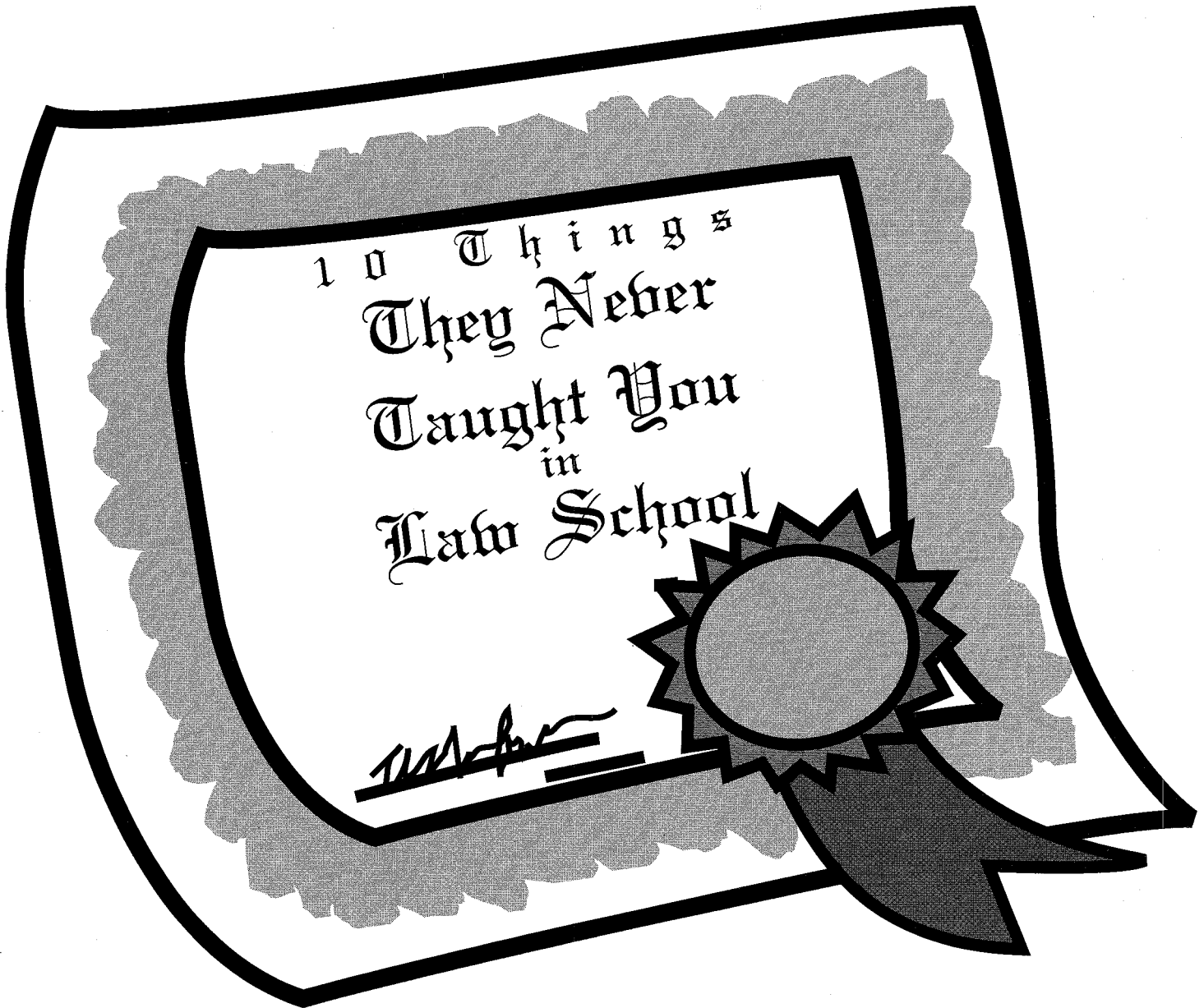
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BY HON. PENNY J. WHITE



White

Penny J. White is a judge on the Tennessee Court of Criminal Appeals. Prior to being selected to serve on the Tennessee Court of Criminal Appeals in October 1992, she was elected the first female circuit court judge for the First Judicial District in Tennessee in August 1990. Judge White is a graduate of East Tennessee State University and the University of Tennessee College of Law. She holds a Masters of Law degree in Advocacy from Georgetown University, Washington, D.C. In addition to her duties on the bench, she has been a faculty member at the University of Tennessee College of Law since 1988, at East Tennessee State University since 1981, and at the National Judicial College since 1993.

This is a reprint of a speech given in December 1993 at a breakfast for new bar admittees in Nashville, which was sponsored by the Tennessee Lawyers' Association for Women. The breakfast was held immediately before the swearing-in of those who had passed the bar examination the previous summer.

**I** remember sitting where you are, now 12 years ago, relieved that the bar was behind me and ready to slay dragons, take on General Motors, and otherwise change the world. It didn't take long until I realized, as some of you may have already, that there were things they didn't teach us in law school. More importantly, there were things they did teach us that were better forgotten or at least not put into practice if we as lawyers want to survive in the real world of law. In preparing to talk with you this morning, I have relived the last 15 years of my life — the three in law school, if you can call that a life, the 10 in private practice and public interest law, and the two plus years on the bench — and have tried to discover for you the 10 most important things they never told you in law school. Already you should feel grateful, for it took me and many others several years and many hard, hard lessons to learn these jewels.

**First,** and this one will come as a surprise to you, I am sure, don't *think* like a lawyer. At the very least, don't *talk* like a lawyer. I know you have spent three years learning how to think like a lawyer. I sat as you did during first-year orientation and listened while law professor after law professor told me that I was about to embark on learning how to think, how to think analytically, and how to think like a lawyer. How exciting. I could hardly wait. It only took me a very few classes to figure out that thinking like a lawyer, as defined by my professors, did not come naturally to me. In fact, I didn't have a clue, early in that first year what thinking like a lawyer meant. By the second and third year I was, as you were, faking it beautifully, and thinking like a lawyer became the only

way to think.

Along with the change in thought process came the new vocabulary. You remember don't you, the first time you tried to get together with your old non-lawyer or non-to-be-lawyer friends. You simply could not converse with them anymore. They didn't know how to talk or to think like a lawyer. It wasn't long until most of you discarded those old ties for new lawyer ones. You just felt more comfortable hanging in the library and the moot court room and talking about *Palsgraff* or the Rule in Shelly's case or separation of powers. Guess what. Jurors and witnesses and clients are much more like your old discarded, non-lawyer friends than your legal comrades.

You've spent three years learning how to think like a lawyer and talk like a lawyer and now is the time to forget all that. Learn to think and talk like a person again and in so doing you will be more communicative with your clients, witnesses, and the jurors and judges in your cases. Mario Cuomo quotes his wife as saying that even on a good day he sounds like an affidavit at dinner. Break the habit. Talk the real language and act like a real person. And, by the way, a subpart of Rule Number One, while you are learning how not to think and talk like a lawyer, you may as well go ahead and forget about the Rule against Perpetuities and the Rule in Shelly's Case. Chances are you'll never need them and if you do, you can find them in a book someplace.

## **#2:** Becoming a lawyer does not require that you lose your humanity.

Even though you have reached that elevated and lofty place — lawyerhood — don't leave your civility and common decency behind. Act like a human. If you have forgotten how, fake it. Treat other lawyers, witnesses, clients, judges, jurors and clerks with respect and dignity.

In a judge's forum we have in East Tennessee, one of my favorite judges, the late George Garrett, summarized this rule in his characteristic colorful way: "Step back. Look at what you're doing. Why do you all do that to those people? Do you not think they are entitled to common

courtesy? A trial is a search for the truth, not the hiring of an airborne ranger for defense."

While Judge Garrett's comments were the most colorful, perhaps, they certainly were not alone in sentiment. Of the dozen or so trial and appellate judges who attended the forum to answer questions, all of them tagged attorney discourtesy as the single most disturbing general trait of lawyers who practiced before them. Many lawyers seem to fall into a modified golden rule posture. Do unto others what they have done unto you or even better, before they get a chance to do unto you. Don't do it. Treat your clients and all professional associates with respect. Return phone calls. Advise clients and witnesses about scheduled changes. Don't harangue or harass victims, adverse witnesses, or opponents. Don't seek out confrontation rather than cooperation.

Just because the remainder of the world has missed the opportunity to be socratized for the last three years does not diminish their importance, their significance, their entitlement to be treated kindly and considerately. Common sense and common courtesy, right and wrong, and justice still matter. Make them your trademark.

Rule # 2 and Rule #3 go hand in hand.

## **#3:** The practice of law is not similar in any respect to professional wrestling.

In moments you will have achieved the status of a professional, licensed by the highest court in this state, to practice a profession that is both honorable and powerful. That license and that status is a privilege. It is bestowed upon you because you have proved yourself academically over the course of three somewhat arduous years. Do not abuse the privilege.

With the privilege you have the ability to earn a very decent living, to make more money than most of the people that you work for. Earn that living. Earn it the old-fashioned way, by working for it, and the right way. Do not fall to the temptation to act unprofessionally because your opponent does. Do not stoop to your

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# 10 Things They Never Taught You

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opponent's level. Rise above it.

Those of you who have had the dubious distinction of being a member of one of my classes at UT Law School know the vernacular expression that I use regularly to summarize this rule. What goes around comes around. I am fond of reminding my "almost lawyers" that unless they plan to relocate every few years or practice in an area in which they never cross paths twice with the same lawyer, judge, litigant, court employee or witness, they better deal honestly, professionally and civilly with all those with whom they come in contact. Otherwise it will be a long, miserable practice. Remember also that judges, like elephants, have terribly good and long memories.

**#4:** Do pro bono. Lawyers who have incorporated this rule into their law life have found that pro bono cases are often more fun, more educational, and more important than 90 percent of other cases.

Make time to do pro bono. If you work for yourself or a small firm, do it. Your creditors won't foreclose while you devote a small portion of your time to pro bono cases. If they try to foreclose, offer them free legal advice, or resort back to thinking like a lawyer and come up with a stall tactic. Better yet, negotiate, arbitrate and mediate until you've resolved the problem.

Whatever it takes, find the time to do pro bono. If you work in a large firm that "won't let you do pro bono" tell them I said to let you. Well, you're right, that won't get you anywhere, tell them the Supreme Court said to let you. Read them the Code. Tell them it's the right thing to do. Tell them it will get you experience at the hands of someone other than their paying client. Whatever it takes, make them let you do it. If they won't, find another place to work. Life is too short to work for people like that.

Treat your pro bono clients identical to all your other clients. They are no different in any way that really matters. Treat them no differently.

Remember the words of Justice Brandeis:

Some men buy diamonds and rare works of art, others delight in automobiles and yachts. My luxury is to invest my surplus effort beyond that required for the proper support of my family to the pleasure of taking up a problem and solving or helping to solve it for the people. I have only one life, and it is short enough. Why waste it on the things I don't want most? I don't want money or property most. I want to be free.

**#5:** Your secretary is your best friend or your worst enemy.

Show me a good, organized lawyer, and I'll show you a better, organized secretary. A secretary must be treated with dignity, respect, and shown his or her importance regularly. Remember days like Secretary's Day and birthdays. Train the secretary, confide in the secretary, show gratitude to the secretary and you will have a weapon far greater than any computerized research system or any form book.

**#6:** Take time off. From the very beginning make the practice of law what you do for a living, not what you do for a life. Make it what you *do*, not what you *are*. What you are is wrapped up in families, friends, children, spouses, lovers, hobbies, dogs and fun. Even though you are a lawyer, remember the leaves still turn golden in the fall; the lake still sparkles at sunset; and the dogwoods and redbuds still burst open with color every spring.

A very successful friend of mine, in his early 50s, recently told me that he had calculated, based on his average life expectancy, the number of sunsets remaining until his death. I thought that was a fairly morbid thing to do until he told me that he had made a personal commitment not to miss seeing more than 10 percent of them because of work from now until the day there are no more sunsets for him to see.

Work hard but don't miss all the sunsets. Even more importantly, don't miss your anniversary, your kid's school play, the PTA meeting or the dog's birthday. Work hard, but live, too. It will make you a better lawyer to experience life outside the law each and every day. It will also make you a much better and happier person.

**#7:** Learn from other lawyers. We can all learn something from everyone. We can learn good and bad, how to do and how not to do, how to look, act, and speak. Don't talk yourself into believing that because you are a recent graduate that you know more law than any of those older lawyers who have been around the courthouse since before you were born. Learn from them. Watch them. Question them. Respect them. Consider what they tell you about how to practice law. Combine their wealth of experiences with your wealth of knowledge and you will be a fine lawyer. Learn from them how to win a case with humility and how to lose with grace. How to handle disappointment, how to deal with the impossible opponent, and how to avoid burnout.

**#8:** Be active in your community. Despite the barrage of anti-lawyer sentiment, we're still held in esteem in some quarters. Use your skill to help others in your community. Work for the homeless, for battered women, help fight hunger, volunteer at a food bank, serve on a historic preservation society, help save a stream, fight the government, close an unsafe jail or housing project, volunteer to prosecute DUI cases, or speak to school children about the court system.

Do something to make a difference. It's easier not to, you know. You can easily fill all your hours researching the law, drafting pleadings and preparing trial notebooks. You can convince yourself as a young lawyer that you must devote all of your time to those things to make it, to reach your goal, whatever it is, in the pro-

fession. But start now giving some of your time and skills to your community in some way. Make a difference out there. Perhaps you can be the generation of lawyers who change our undeserved public perception. Perhaps you can free us all from the negative stereotype. At every opportunity talk positively with the public about what we really do. Try to spend some time each and every day serving a master other than the clock. The rewards will be great.

**#9:** Don't take yourself too seriously. You are becoming a lawyer, not the deity. Many of us become too convinced of our own importance in this profession. We are then perceived as arrogant, overbearing, and sometimes downright ridiculous.

When I was first elected circuit judge, I felt important. Don't get me wrong — mine had been no sophisticated law practice. After finishing the Prettyman program at Georgetown, I returned home and hung a shingle. For a number of months, I answered my own telephone, typed my own papers, and balanced my own books (not very hard since I only needed one column). After a while I got a three-day-a-week secretary, a second phone line (accomplished by adding a second phone, since a system cost too much), and a computer. My practice was the kind I always wanted, affectionately referred to by me as a "people practice," and I was delighted when I had to return a portion of my first client's fee because he and his wife reunited.

Eventually the practice grew, too fast really, and I fell victim to many of these rules that I now stand and preach to you about. I didn't take time off, I didn't always think like a person, and all too often I found myself in the middle of a wrestling match. I did, however, strive to learn from others, and as a result I respected and held in high regard the members of the judiciary in my home circuit. When I became one of them, against fairly phenomenal odds, I felt, well, I felt important.

On my first day on the bench, I had carefully written out everything I wanted to say so that I would make no mistakes. I walked into the courtroom. My bailiff, Joe — about 82 at that time — opened court, and I looked down at my script. "Thank you your honor," I said. Everyone laughed. I didn't understand why they were laughing at me, an important jurist, until I realized and unfortunately verbalized, "Oh, I'm your honor."

In any event I was soon to discover, before the day was through, how very significant and important I was. My first case was what we refer to in East Tennessee as post divorce. It has numerous similarities to post conviction justices, but unfortunately, there is no three-year statute of limitation and no previous determination or waiver defenses, but perhaps we should consider that. This post divorce proceeding called upon me to determine a matter of life and death: who killed the cockatiel. It seems that after the divorce, the husband had left the marital residence as ordered but had failed to remove the cockatiel he had been awarded. It was a rare one, he testified, worth several hundred dollars. When he returned to retrieve the bird a few weeks later, he found it, in its cage, with its feet pointed north, as they say. Thus he wanted the court to find the wife to be the murderer of the poor dead bird and award him appropriate compensation for this piece of marital property, which he now could not have.

Out of this funny war story comes two good lessons, I believe. One is that we should never take ourselves too seriously, but more importantly, we must never underestimate the importance of seemingly trivial matters to the litigants. Every case is the most important case they will ever have.

Were this episode not enough to convince me of my significant insignificance as a jurist, I had another, a few months later in Johnson County, the most rural county in the First District, and the farthest point in the northeast corner of the state. Sometime about three months into my tenure as circuit judge, I had been to

the Judicial Academy and heard Judge Julian Guinn and others talk about taking charge. Being in control of your courtroom. And the importance of being efficient and fair, but firm. I decided to take the advice to heart and to become more forceful in my courtroom. I am, by nature, a happy-go-lucky sort, but feel strongly about the appropriate decorum in a courtroom.

In Mountain City on this winter morning, I was scheduled to try a property dispute case. It had all the aspects of the *Hatfields v. McCoys*, a long-standing feud over a piece of ground, not a very big piece, mind you, but in the mountains ground is ground. In this case, the plaintiff was a man — not unusual — was two-and-a-half times my age, and was appearing *pro se*, also not unusual in this court. What a perfect time to experiment with my new forcefulness. On that day we had

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## 10 Things They Never Taught You

(Continued from page 23)

been relegated to a conference room because the county commission and a jury trial occupied the only two courtrooms.

As we began the trial, the plaintiff, a feisty old man from Harlan, Ky., addressed me in this manner: "Lady, Lady." Those of you who know me, know that I deplore being called lady. "Lady," he continued, "I have something I want to say." I knew I had to get control of the situation immediately and take charge. And so I loudly, rudely and emphatically said to him, "Sir, I am talking right now. When I finish I will hear from you. Right now, however, you will sit down and be quiet until I get finished. And don't call me lady."

I finished my preliminary remarks and turned to him — he had sat quietly since my outburst — and said, "Now, sir, what was it you wished to say?" He looked up sheepishly and meekly and said to me, "Well, lady, I just wanted to say I think everybody ought to love Jesus."

Don't take yourself too seriously. Retain the ability to laugh at yourself and learn from your mistakes. Remember, to err is human.

**Finally,** don't forget why you became a lawyer. I hope it was for the right reasons. If it wasn't, if you became a lawyer to make money, to drive the nicest car and build the finest home, then I think you will find that

what they say about people who marry for money is equally true of those who enter this profession for money: it will be the most expensive fortune you ever earn.

On the other hand, if you entered this profession for the *right* reasons, to make a difference, to take a stand, to serve others, then do it. Those of us who have been in the profession a while have left much undone for you.

Yours is the challenge to integrate into our profession fully those who aren't white males, but are equally competent and capable attorneys.

Yours is the challenge to fight laws that invidiously discriminate against the least of us.

Yours is the challenge to stand up for those who are too small or too frail to fight for themselves. You can be the voice for the speechless. The ears for the deaf. The eyes for the blind.

You can be the generation of lawyers that restores us to our deserved status of respect and credibility in our communities. You can help solve the plight of our criminal justice system, underfunded and overworked; detangle the web of tort reform; and author the law of biogenetics, massive torts and children's rights.

The challenge is yours. Remember why you became a lawyer. And if it was for the right reasons — and I'm betting it was — then start today making a difference and enjoying the adventure that the greatest profession in the world has to offer. Good luck.  $\text{E}$

## PERSPECTIVE

(Continued from page 3)

The day-to-day work of the TBA membership is done by its committees and sections. In many instances, these lawyers also write briefs, appear for us in court and otherwise serve the TBA and its members in a professional way. On June 1, our Criminal Justice Section Chair Robert M. Friedman and Secretary/Treasurer William C. Moore Jr. are scheduled to go before the Supreme Court in the indigent defense fund matter. In addition, our General Counsel Jack Robinson Sr. and Associate General Counsel Larry Wilks are working on a number of cases and matters for the TBA.

From my admittedly biased viewpoint, I say that our organization has had a very good year. This is because of the long hours and extraordinary effort of hundreds of volunteer bar members and a splendid staff. Your officers, Board of Governors and House of Delegates have all served you well. I can say without exaggeration that this is as talented and dedicated a group as I have ever known. All of them — volunteers and staff alike — have been supportive of my efforts and I extend a most grateful "Thank You!" to them.

Lawyers have weathered a firestorm of criticism for the past several years. Even though criticized, our profession holds a fascination for most Americans. Many younger persons still view the law as an attractive career with opportunities in law practice, government service and non-traditional positions.

My reading on the subject gives me hope that the more vicious lawyer bashing is lessening. Hopefully, all of us can use every opportunity to speak positively about our justice system, constructively on needed improvements to the system and with respect and loyalty about our beloved profession.

My deepest thanks and appreciation to you for allowing me to serve this past year. It has been an experience my wife, Betty Lee, and I will never forget.  $\text{E}$

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