

Sidebar

ADAPT TO YOUR AUDIENCE

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In college, I worked weekends as a copy boy for the *New York Times*. After a night of too many cold Budweisers and other stimulants, I'd sleep a few hours, then hop the subway to sleazy Times Square where I'd do menial chores for the guys who wrote the editorials that shaped world opinion. The *Times*, with its two distinct cultures, was an alien yet familiar place. I had never met people like the editors with their Manhattan world of education, wealth, and influence, whose offices were adorned with autographed photos of presidents and prime ministers, or with a framed letter from President Kennedy signed, simply, "Jack." The union guys, however, who printed and delivered the paper, were my neighbors—ethnic working stiffs whose only connection to "the city" was their place of employment.

This was the world of Gutenberg and lead type, an antiquated system perpetrated by the union's control over production. To fix a simple typo, three union members were involved, taking at least 15 minutes. If an editor meekly requested

to "please hurry," he risked the printer storming off, screaming for a shop steward, further delaying the paper. Many editors viewed the union members as lazy and ignorant. One proud printer, always immaculate in shirt and tie, mentioned that he was third generation at the *Times*. In disdain, a young editor whispered: "What a jerk." The white collars were liberal; the blue, conservative. Neither knew the other nor wanted to. Kinda like today.

After a year or so, I became a part-time editorial page make-up editor, which meant I was responsible for the editorial and op-ed pages as they went to press. I was accountable for grammar, typos, and content. My two pages would have to be perfect, and no excuses. It was a demanding, pressure-packed job for a 21-year-old, really the best education I ever received. Columns and editorials were often submitted at the last moment, so I had to read and edit them for form and substance, with an eye on the clock. "Hey kid, where's your pages? You're holding up the whole *f*—paper," I heard more than once.

Even more challenging, I had to deal with both worlds—the editors, who didn't hesitate to let me know if I omitted a comma, and the printers, who resented my long hair and work in the enemy camp. I would quietly seethe as a printer chatted about last night's Yankees game while I waited for a line to be inserted. And I certainly couldn't chastise a world-renown columnist who filed his piece late and long. So I politely discussed sports or family with the union mugs, while I asked the editors about their trip to Bangkok, which they knew better than the Bronx. I learned to keep my big mouth shut, hide frustration and anger. And to smile.

Great training for a lawyer. For that is what we have to do: target our arguments, our actions, even our dress to our audience. We must deal with clerks and court officers, jurors and judges, and adversaries—some saintly, some corrupt. You must know each and behave accordingly. For if you fail—if you talk when you should listen, or if you're arrogant and condescending—you'll lose.

Clients. Perhaps the most important. You must connect with the general counsel of Boeing and the high school dropout living above the 99-cent store on Flatbush Avenue. You must be knowledgeable and sensitive, erudite and articulate. You must tailor your language so that you're understood by all. Too many sprinkle every sentence with legalese as if it makes them sound intelligent. Instead, you're seen as clueless. Use clear, concise language even to other lawyers. I would explain everything in rudimentary terms to co-counsel—often prefacing my discussion: Just stop me if I'm telling you stuff you already know. I was rarely interrupted.

An effective litigator is comfortable with those who helicopter to the Hamptons as well as those who ride the F train to shabby Coney Island. This ability is rare because we live and socialize in economic isolation where we rarely interact with those who are different. I never enjoyed fighting over our

only antiquated bathroom or sleeping in a small room with my two brothers, but growing up on crowded sidewalks taught me toughness and resiliency, something lacking amid the whine for “trigger warnings” and “safe spaces.” More importantly, I learned to like people, even though most are disgusting. Like cops, litigators see others at their worst, and if you can occasionally chuckle at their flaws and foibles, you’re halfway to success.

Clerks, law secretaries, court officers. Sometimes way more important than the judge. It’s easy to snap at them, treat them rudely, or ignore them. It’s like

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the time I umped a Little League baseball game behind the plate without an athletic cup. You only do it once. Court personnel have untold power and will make your life miserable. Be nice; it’s not that hard.

Yet, it doesn’t always work. Whenever we settled a death case, I submitted compromise documents to an elderly, wheelchair bound clerk with a perpetual scowl. Time and again, I would deliver the papers only to have them returned with a litany of suggested changes. I would use all my powers to elicit a smile, a kind word. Never happened. He wouldn’t even look up as he tossed the papers in my lap. I almost wondered if I was as charming as I thought. Finally, as president of the Catholic Lawyers, I honored him for his many years of treasured service. I believe my introduction mentioned his good

nature and brilliant sense of humor. From then, my papers were approved the day they were submitted.

Adversaries. I really can’t help it. I’m even distrustful of canonized saints. Unless opposing counsel prove honest and forthright over and over again, I’m suspicious of every act, every accommodation. My sole imperfection. Be wary at first. Ascertain whether she is legit or a phony, righteous or a snake. And then act accordingly.

I’ve given up on the eye-for-an-eye litigation model. Really doesn’t work. You end up covered in mud and smelling like a sewer. At the same time, you can’t back down. When an opponent pulled a fast one, I’d serve a motion that afternoon. The better practice, however, is to battle over the heart of the case—not irrelevant deposition questions or the wording of interrogatories. Nothing is more feared than a reputation for integrity, resolve, and the response of “Ready” when the judge calls the case for trial.

Judges. Listen and observe. We’re so busy citing cases and statutes, the judge’s questions go unanswered and her insights unheeded. As they say in my granddaughter’s nursery school, put on your “listening ears.” It takes concentration to hear and comprehend when arguing a motion or an appeal as your mind races, trying to recall every nuance, admission, and regulation.

Research judges before appearing; study their rules, procedures. Get the dirt from other counsel. Find out how the judge was appointed or elected, whether she’s pro-plaintiff or favors the defense. Look up from your notes and watch for gestures, facial expressions that convey preferences. Some like aggressive behavior while others prefer professional, reasoned argument. On one of my cross-exams, the judge interrupted the expert’s answer and pointedly insisted she “answer yes or no.” I correctly interpreted that I could dance about, tormenting the witness, which I did effectively. Another time, while trying a nonjury case before a judge who was loud, threatening, and

brash, my hostile cross stopped when the judge calmly said: “You know, Mr. Nolan, if a jury was present, they wouldn’t appreciate your tone.”

And please don’t forget judges are human too, at least some of them.

Jurors. Ordinary citizens don’t like us much, clutching their pocketbooks whenever you’re identified as a member of the bar. Be respectful and courteous. Look them in the eye. Treat them as equals. Don’t be condescending in language or action. “Who does he think he is” is still the worst insult imaginable. An occasional joke, even in a most serious case, never hurts. Almost all jurors want to do what’s right. Help them by admitting weakness and being genuine.

Before the world discovered Brooklyn, its wonder and hipness, I attended seminars where white-shoe partners would study my name tag and ask: Where do you live in New York City? I’d innocently respond “Brooklyn,” and their eyes would immediately rise and search for someone with more intelligence, gravitas. Never think you’re better than the guy who picks up garbage, mows a lawn, or changes diapers. My only wish for those phonies, who thought I was a dope for living outside Manhattan, was a herniated disk or two. Jurors, however, will get even.

Dress. A mentor once preached that wearing an expensive suit and driving a Mercedes were essential to success. Hyperbole, of course, but you are judged on many attributes, including your clothes. As a dinosaur, I no longer have a clue what to wear. I’m certain overdressing in Silicon Valley is as damaging as the time I wore a sleek, double-breasted suit causing a potential client to mutter that I looked like one of those lawyers who advertised in the subway. The retainer wasn’t signed.

All you do—how you act, look, and sound—is evaluated. No, you can’t please everyone. So don’t try. Just be yourself, always. But it never hurts to know your audience. ■