

WAIT WAIT... DON'T TELL ME: CIVILITY MATTERS

Earl E. O'Connor Inn of Court

Team 3

January 10, 2012

Hon. Karen Arnold-Burger, Team Leader

Jimmy Allen

Lindsey Erickson

Peter Jouras

Sara Anthony

Neil Gosch

Sarah Lepak

Kelli Breer

Sean Hamer

Jessica Madrid

Tom Buchanan

Steve Henry

Connie Shidler

Matthew Corbin

Stacey Janssen

Roger Stanton

Roger Stanton: Live from the beautiful Homestead Country Club in Prairie Village, Kansas this is Judge Karen Arnold-Burger's Team 3 Presentation: Wait Wait Don't Tell Me: Civility Matters: A show which will explore the fact and fiction of civility in our legal system. I'm Roger Stanton and here's your host the talented **NEIL GOSCH**.

Neil Gosch: Thank you, Roger. We have a great show for you tonight. But first, I would like to introduce our celebrity panel.

First, we have Mr. Denny Crane.

Denny Crane is the founding and senior partner of Crane, Poole & Schmidt with headquarters in Boston, Massachusetts, and offices around the world. Mr. Crane has won multiple awards as a trial attorney, is listed in all major legal publications and magazines, and is known and admired by all. Mr. Crane has tried over 6,000 cases without ever losing a single one.

Our next panelist also needs little introduction and is well-known by all, **Gov. Sam Brownback**.

And finally, our last panelist, Born in Waterloo, Iowa (home of John Wayne ... Gacy), **Michele Bachmann** was elected to the U.S. House of Representatives in 2006. Bachmann helped found the conservative Tea Party Caucus and announced her candidacy for the Republican presidential nomination this past June. After the events in Iowa last week, she seems to have a little time on her hands.

Welcome to our great panel.

Finally, as lawyers you know we have to have rules and regulations, so let's get right to it.

We have divided the room into four teams: the Dum Dums, the Smarties, the Jolly Ranchers and the Bazookas. Each team will get one point for each correct answer. The team with the most points at the end of the game will receive a prize. Our team host, will randomly select the team member to ask each question. **Roger Stanton** will serve as our all important scorekeeper.

OK, it is time to start our game.

We are going to start our game with "Who's Our Panelist This Time." One of our celebrity panel members is going to read you a quotation. Your job is to identify who said it and the context of the comment. If you are right, your team will get a point.

I turn it over to **LINDSEY ERICKSON**, Host for the Dum Dums.

Lindsey Erickson: It's time to greet our first contestant. And you are?

Contestant: Gives name.

Lindsey Erickson: Well welcome _____ to Wait Wait Don't Tell Me Civility Matters. It is great to have you with us. Are you ready?

OK here is our first quote courtesy of, well I will let him introduce himself:

Denny Crane:

Denny Crane, here. "You are sick of him, but I have to work with him every day."

Lindsey Erickson: "You are sick of him, but I have to work with him every day," who said this and what was the context?

Contestant: Answer.

Lindsey Erickson: That was the response to a complaint made by French President Nicolas Sarkozy when both men were caught by an open microphone gossiping about Israel Prime Minister Benjamin Netanyahu.

Answer: Who said it? President Barack Obama! Guess he wasn't exhibiting civility toward his colleague and it has probably damaged the President's relationship with Israel, certainly with Netanyahu...could change the course of history....just for being impolite.

Now I turn it over to, **MATT CORBIN**, Host for the Smarties.

Matt Corbin: Thanks, Lindsey. Let's meet our first contestant from the Smarties. And you are? _____ . Welcome, _____ .

Are you ready for your quote?

Take it away Gov. Brownback.

Gov. Sam Brownback:

“So let us begin anew--remembering on both sides that civility is not a sign of weakness, and sincerity is always subject to proof.”

Matt Corbin: “So let us begin anew--remembering on both sides that civility is not a sign of weakness, and sincerity is always subject to proof.” Who was the speaker and what was the context?

Contestant: Answer.

Matt Corbin: This former president said this at a time when we were closer to nuclear war than we have ever been in our history.

Answer: President John F. Kennedy’s admonishment to both sides of the Cold War divide in his 1961 Inaugural address. Pretty sound advice even today.

Now I turn it over to **JUDGE ARNOLD-BURGER**, Host for the Jolly Ranchers.

Judge Arnold-Burger: Thanks, Matt. Let's meet our first contestant from the Jolly Ranchers. And you are? _____. Welcome, _____.

Are you ready for your quote?

Take it away Michelle Bachman.

Michelle Bachman:

“You have a problem with allowing someone to finish speaking.”

Judge Arnold-Burger: “You have a problem with allowing someone to finish speaking.” Who was the speaker and to what inconsiderate oaf was the speaker referring?

Contestant: Answers.

Judge Arnold-Burger: This was said by and about one of the many contenders in a recent GOP debate.

The answer is: Mitt Romney, reminding Texas Governor Rick Perry to mind his manners during a heated presidential debate in which Perry accused him of hiring illegal immigrants in his household. Look where such rude behavior landed Gov. Perry...

Next, I turn it over to **PETER JOURAS** host of the Bazookas.

Peter Jouras: Thanks, Judge Arnold-Burger. Let's meet our first contestant from the Bazookas. And you are? _____. Welcome, _____.

Are you ready for your quote?

Take it away Denny Crane.

Denny Crane:

“We have nine justices who don’t always agree, but I’ve never heard a voice raised in anger in 17 years in that conference room.”

Peter Jouras: “We have nine justices who don’t always agree, but I’ve never heard a voice raised in anger in 17 years in that conference room.” Who was the speaker and what was the context?

Contestant: Answers.

Peter Jouras: This is one of our most conservative jurists.

Answer: That was Justice Clarence Thomas speaking to a group of lawyers at the annual ABA meeting in Toronto in 2011. I guess they just pour out all the vitriol in their opinions, although Justice Ginsberg has said that all comments go to the argument not the justice personally...really?

Denny Crane: They certainly weren't very nice to Alan and I when we argued our last case before the Supreme Court.

Neil Gosch: OK, that concludes our first round. **Roger,** how did our teams do?

Roger Stanton: After Round 1, the Dum Dums have ___point; the Smarties ___ point, the Jolly Ranchers, ___ points and the Bazookas have ___points.

Neil Gosch: Our next game is called:

Roger Stanton: Oh, Beehave.

Neil Gosch: Questions about politeness and etiquette. Get the question right and your team will receive one point. Let's return to the Dum Dums and their host for our first question.

Lindsey Erickson: Playing for the Dum Dums this round is; _____. Are you ready to play?

We are going to start off with no less of an etiquette expert than George Washington, the father of our country. At the age of 15 he copied in his own hand something called the Rules of Civility and Decent Behavior in Company and Conversation. Among them was which important rule:

- a. If challenged to a duel, stand with the left side of the body exposed to the opponent and wait for him to shoot. If he tries to “mortally wound or slay you” only then may you shoot at him.
- b. If you are in good company and you see any “thick spittle” or filth put your foot dexterously upon it
- c. If your wig becomes askew at a social function “create a pretext to lower yourself under or behind the table or a board and then address the fault.

Contestant: Answers

Lindsey Erickson: The answer was in fact b, spittle. Washington also advised that if you see any vermon or flees on the clothes of your companion's coat, remove it privately. I turn it over to Matt Corbin, host of the Smarties. I notice that he does not have spittle on his coat and I'm certainly not challenging him to a duel.

Stan Hazlett Voice: Kansas Rules of Professional Conduct: Rule 3.5(d): A lawyer shall not engage in undignified or discourteous conduct degrading to a tribunal.

Neil Gosch: Ok, now its over to the Smarties for our second question. Again, get this right and you earn a point for your team. Matt.

Matt Corbin: Playing for the Smarties this round is; _____. Are you ready to play?

On September 30, 2011 former U.S. Senator Majority Leader Bob Dole returned to Topeka to be the first person commemorated on the Kansas Walk of Honor in front of the Capitol building. When Dole spoke he contrasted his era with today's Washington and offered some sage advice.

"There's got to be more civility. There's got to be more trust. And there's got to be bipartisanship." He told the crowd. *"Honor,"* he said, *"comes from a lifetime of work, decency, self-denial, honesty, love of country and a neighbor's concern for those in distress."* He also said that fame was fleeting. It is no secret that he has not been in the headlines much lately. Although he does not miss the spotlight, he said he has been waiting for an invitation to appear in what:

- a. Dancing with Stars
- b. A Cialis commercial
- c. As a replacement for Charlie Sheen on Two and a Half Men

Contestant: Answer

Matt Corbin: The correct answer is a, Dancing with Stars. Sen. Dole was the longest serving Republican majority leader in history and left behind a reputation for civility in discourse. Many point to the years that he was Senate Majority Leader and George Mitchell was minority leader as a guidepost for how politics should work. I turn it over to Judge Arnold-Burger for the Jolly Ranchers.

Neil Gosch: Wow, that is quite an achievement for our former public servant. Now over to the Jolly Ranchers. There's one point riding on this. Judge.

Judge Arnold-Burger: Playing for the Jolly Ranchers this round is; _____. Are you ready to play?

Which of the following is part of the Tenets of Professional Conduct of the Johnson County Bar Association:

- a. I shall advise my clients that civility and courtesy are traits of weak-minded wimps who charge lower hourly rates.

- b. I shall make every effort to schedule out-of-town depositions or hearings on dates that conflict with my opponent's professional and personal calendar -- especially if it would result in their missing "little Suzie's" kindergarten recital.
- c. I shall be vigorous in my representation of my clients, recognizing, however, that as an officer of the Court, excessive zeal may be detrimental to both my clients and our profession.

Contestant: Answers

Judge Arnold-Burger: The answer was in fact "c" Vigorous representation does not require wearing war-paint in the court room.

Neil Gosch: Now over to the Bazookas. Peter.

Peter Jouras: Playing for the Bazookas this round is; _____. Are you ready to play?

Which of the following is among George Washington's One Hundred Ten *Rules of Civility & Decent Behavior in Company and Conversation*.

- a. Labor to keep alive in your breast that little spark of celestial fire called conscience.
- b. If others talk at the table, be attentive but talk not with meat in your mouth.
- c. Put not off your clothes in the presence of others, nor go out of your chamber half dressed.
- d. All of the above.

Contestant: Answers

Peter Jouras: The Answer is "d. All of the above." In addition to living a life guided by conscience, George apparently also thought it best not to talk with your mouth full or leave the house without your pants on.

Neil Gosch: OK, that concludes our second round. **Roger**, how did our teams do?

Roger Stanton: After Round 2, the Dum Dums have ___point; the Smarties ___ point, the Jolly Ranchers, ___ points and the Bazookas have ___points.

Neil Gosch: Our next game the Bluff the Listener Game. You must try to tell truth from fiction. Michelle Bachman is going to read an example.

Michelle Bachman:

Ever say to yourself, "Dang, I wish those tweets were smelly." Meet Olly. A product that will let you match a computer update to a fragrance. You mount a little scent canister on your terminal, fill it with whatever smell you want and when you receive a ping from your calendar, an email, tweet or facebook

post it arrives in the form of a customizable scent. The company behind Ollie suggests it might be fun to match smells with the source of the update. They say to use essential oils, a piece of fruit or even a drop of gin. Got an email from that A-hole lawyer on the other side of a case...well guess what, you can be alerted by that tell tale smell! A facebook message from Grandma? Mix Jean Nate with Virginia Slims. And Uncle Buddy doesn't have to ask you to pull his finger anymore, now he can do it remotely.

Neil Gosch: So audience, is this story true or false?

It is true!

If you want the smell of rotten eggs when your ex-girlfriend tweets at you, you can have that. The company Mint Foundary is the founder of Olly, the smellable tweet device. See <http://ollyfactory.com/>

So let's begin with the Dum Dums. Panelists are each going to tell you a story about new associate training programs instituted in law firms. Only one story is real, the other two are fakes. Pick the real story and win a point for your team. Take it away Dum Dums.

Lindsey Erickson: Playing for the Dum Dums this round is; _____. Are you ready to play?

Each of these stories is going to be about new associate training taken to the extreme. We start with Michelle Bachman.

Michelle Bachman: Arizona law firms have been concerned for a long time about the cowboys that are coming out of law school who seem to base their litigation style on Boston Legal instead of the rules of professional conduct. So one Phoenix firm adopted a training program for new associates entitled "How to Be a Classy Lawyer." Reasons examined for being "classy" include:

- a. It's a small town. If you aren't classy word gets around.
- b. Classy lawyers get better results because judges, juries and appellate courts trust classy lawyers more.
- c. It is more efficient. Less time is wasted on petty and needless disputes.
- d. Classy lawyers get more referrals.
- e. It's good for the firm. A firm with a classy reputation provides each of its members with tremendous advantages.

Neil Gosch: Next we have Gov. Brownback.

Gov. Brownback: Law, says Kathy Stevens, can be a grueling conflict ridden business, so the Berkley, California law firm is bringing back Everything You Need to Know You Learned in Kindergarten philosophy to training lawyers. It consists of a twelve week course for new associates, who start each day by hanging their coats in assigned cubbies, mandatory group hugs and a show-and-tell segment so new co-workers can share their hobbies and interests. In the afternoon, they break for juice and cookies, finger-painting and 15 minute naps on yoga mats. *"It sounds simplistic, but it reinforces team building, obeying rules and fun,"* Stevens explained. The program has only received one complaint in

three years. An associate told the employment board that mandatory hugging was a violation of his "personal space."

Neil Gosch: And finally, Denny Crane.

Denny Crane: No one denies that Chad Hudgens was water boarded by one of the senior partners in his firm in a team building exercise. Concerned about the firm's lagging ability to bring in new clients, one of the senior partners gathered all the junior members together and asked for a volunteer. Hudgens gamely raised his hand. Next thing he knew he was being held down by his co-workers while the boss poured a gallon of water over his face causing him to fear for his life. Afterwards, the senior partner told the junior members, *"You saw how hard Chad fought for air right there, well I want you to go back inside and fight that hard to get and keep clients."* Asked why he would volunteer for such a thing, Hudgens explained *"The last time we did a team building exercise outside we did an egg toss."* Although no egg toss, the senior partner denied it was torture. *"I don't even know if this would be an issue if it weren't for Guantanamo Bay,"* he said, referring to the infamous military detention facility which has muddied the image of recreational torture. *"We are not the mean water boarding firm that people think we are."*

Lindsey Erickson: OK, (contestant's name) which one is true: the Arizona Law Firm that started a program entitled How to Be a Classy Lawyer, Everything You Need to Know You Learned in Kindergarten training in California, or Water Boarding to learn how to get and keep clients?

Only one of these stories is true, which one is it?

Contestant: Answer.

Lindsey Erickson: The correct answer is "A." A Phoenix law firm has instituted a required "Classy Lawyer" training program. See fresnocountybar.org/files/Courtroom_Conduct-Demeanor-Ethics.ppt The waterboarding is true, but it was not a law firm, it was a corporate sales force with Prosper, Inc. in Provo, Utah. See http://www.sltrib.com/ci_8385103.

Stan Hazlett Voice: **Kansas Rules of Professional Conduct; Preamble (5): "A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials."**

Lindsey Erickson: Take it away Matt.

Matt Corbin: Playing for the Smarties this round is; _____. Are you ready to play?

Each of these stories is going to be about inappropriate email exchanges. We start with Denny Crane

Denny Crane: Kurt Mitchell, a plaintiff's lawyer from Florida sued Volkswagen of America on behalf of his client. Nick Mooney, defense lawyer also from Florida, represented Volkswagen in the lawsuit. Here the emailed insults exchanged between the two lawyers:

Mooney written after an accusation that he couldn't handle the pressures of litigation:

I am handling more than 200 cases, many of which were more important/significant than these little Magnuson Moss warranty claims that are handled by bottom feeding/scum sucking/loser lawyers like yourself.”

Mitchell: You display symptoms of a disability marked by closely spaced eyes, dull blank stare, bulbous head, and lying.

Mooney: You should look in the mirror to see signs of a disability. Then check your children (if they are even yours. . . . Better check the garbage man that comes by your trailer to make sure they don't look like him.”

Mitchell, after learning Mooney's son really did suffer from a birth defect: While I am sorry to hear about your disabled child, that sort of thing is to be expected when a retard reproduces . . . Do not hate me, hate your genetics. However, I would look at the bright side, at least you definitely know the kid is yours.

Michelle Bachman: OH MY GOODNESS!!!!

Neil Gosch: Our next story comes from Gov. Brownback.

Gov. Brownback:

Occupy Wall Street and movements like it are causing controversy across the country. It is, undoubtedly, a hot topic that pushes the buttons of lots of people on both sides of the issue. And, as is a common practice today, many of those opinions are being expressed with social media. The trouble, of course, with social media, is that people actually read what you write.

Just ask Jeffrey Cox, who was terminated from his position as Deputy AG in California after posting on his wall that riot police in New York should use “live ammunition” to handle the protestors. He also called protestors “political enemies” and “thugs.”

The Office of the California Attorney General published a statement after terminating Cox, in which it stated that “Civility and courtesy toward all members of the public are very important to the California attorney general.” A spokesperson also stated that this was the first time the Office had terminated an employee for inappropriate use of social media.

Neil Gosch: And our final story, from Michelle Bachman.

Michelle Bachman:

Megan Walters, a young attorney at a big downtown law firm in Kansas City, Missouri, found that the practice of law was really cutting into her ability to meet new people and establish some sort of love life. She finally got up the nerve to get on one of those dating websites. She started corresponding by posting on the walls of a couple different guys, but there was one in particular, John, that she really thought had potential. She revealed in one of her posts that she was an attorney. There is no question that she did not represent John in any way nor did he think she did. John told her that he had gotten a

jury summons and really did not want to go through the hassle of appearing just to wait around all day and not even get called. She posted on his wall that he could write a letter to the judge and tell the judge that he had a serious medical illness that would prevent him from appearing or sitting on a jury. "They never check that stuff out," she wrote. They started jokingly corresponding about what the illness could be and the details of the letter. Another attorney happened to be reading the posts and turned Megan into the local disciplinary panel for attempting to perpetrate a fraud on the court. Megan was suspended from the practice of law for one year.

Matt Corbin: OK, (contestant's name). Is it the dueling emails in the Volkswagen case, the AG fired for tweeting about the Occupy Wallstreet "thugs" or the attorney who advised someone on a social media site how to lie to the court? Which story is true?

Contestant: Answer.

Matt Corbin: The answer is "A", Mooney received a public reprimand and had to take a class on professionalism. Mitchell was suspended for 10 days and had to attend an anger management class. Florida Bar v. Kurt D. Mitchell and Nicholas Francis Mooney, No. 2009-10487 and 2009-10745. The AG story is true, but Cox was an AG in Indiana and he tweeted it, he did not post it on his wall, and he was attacking union protesters in Wisconsin... but what he said is true and the fact that it caused him to be fired is true. <http://www.wltx.com/news/national/article/124377/142/IN-Official-Fired-After-Remarks-on-Twitter> And finally, although Megan's story is not true, a similar situation did cause an attorney in Maryland to be reprimanded when someone asked him on a social media site how a person could get a divorce if he or she had not been separated for the statutory 12 months required in their state. The attorney advised the social friend that as long as they both signed an affidavit that they had been separated for at least 12 months, no one would check. He was only publicly reprimanded because the person did not act on the advice. This was considered to be conduct that was prejudicial to the administration of justice. See *Attorney Grievance Commission of Maryland v. Elmendorf*, 404 Md. 353, 946 A.2d 542 (2008). Take it away Judge Arnold-Burger

Stan Hazlett Voice: Kansas Rules of Professional Responsibility: Rule 3.3(a)(1): A lawyer shall not knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.

Judge Arnold-Burger: Thank you, Stan. Playing for the Jolly Ranchers this round is; _____. Are you ready to play? Each of these stories is going to be about Judges Behaving Badly.

We start with Denny Crane.

Denny Crane: For these, we have a reenactment by our fine appellate bench. The following exchange took place at an en banc hearing before an appellate court: (Play tape)

MR. TURNER (attorney arguing before the court): Your honor, I think the amount of drugs in that truck supports the intent to distribute. And the jury....

JUDGE DENNIS: Well, we've said over and over that the amount.... this court, no court has said that you can infer...

CHIEF JUDGE JONES Judge Dennis...

JUDGE DENNIS: ... just on the basis of the amount of drugs

CHIEF JUDGE JONES: Judge Dennis

JUDGE DENNIS: Can I, can I, can I ask a question

CHIEF JUDGE JONES: You have monopolized, uh, uh, seven minutes...

JUDGE DENNIS: Well, I'm way behind on asking questions in this court. I have been quiet a lot of times, and I am involved in this case....

CHIEF JUDGE JONES slams hand down on the table (loudly), stands halfway up out of chair, and points toward the door.

CHIEF JUDGE JONES: **Would you like to leave?**

JUDGE DENNIS: Pardon? What did you say?

CHIEF JUDGE JONES: **I want you to shut up** long enough for me to suggest that perhaps....

JUDGE DENNIS: **Don't tell me to shut up....**

CHIEF JUDGE JONES: ... you should give some other judge a chance to ask a question ...

JUDGE DENNIS: Listen, I have been in this courtroom many times and gotten closed out and not able to ask a question. I don't think I'm being overbearing....

CHIEF JUDGE JONES: You've been asking questions for the entire seven minutes....

JUDGE DENNIS: Well, I happen to be through. I have no more questions.

CHIEF JUDGE JONES: I just want to offer any other judge an opportunity to ask a question. Some may support your position. If nobody else chooses to ask a question, then please go forward.

Neil Gosch: Our next story comes from Gov. Brownback.

Gov. Brownback:

The Washington Supreme Court says a King County judge who has been compared to TV's "Judge Judy" will be suspended without pay for five days for being rude to defendants in her courtroom.

The court ruled that King County District Judge Judith Eiler (yes she really is Judge Judy) violated rules requiring judges to be "patient, dignified, and courteous" to defendants, lawyers and others. The tart-

tongued jurist often had litigants in tears, interrupting their answers with insults. She called offenders idiots, stupid, and made fun of their bad choices.

"If you drive like an idiot "cause you're late for work, you're gonna have to pay for it. You can see your picture on the headlines of the Seattle Times, stupid young man who shouldn't be driving, " she shouted at one defendant.

Neil Gosch: This is hard isn't it? Our final story comes from Michelle Bachman.

Michelle Bachman:

A woman was arrested in the south part of Hutchinson and charged with agreeing to perform an act of sexual intercourse for hire. Her arrest derived from her unwitting solicitation of a Hutchinson police officer. After her conviction and in conjunction with the granting of her request for probation, the judge entered the following memorandum decision (the names have been changed to protect the innocent):
(Play audio tape)

This is the saga of Sue Magnus
Whose ancient profession brings her before us.
On January 30th, 1974,
This lass agreed to work as a whore.
...
At the Brass Rail they met,
And for twenty dollars the trick was all set.
In separate cars they did pursue,
To the sensuous apartment of Sue.
Bound for her bed she spared not a minute,
Followed by Harris with his heart not in
As she prepared to repose there in her bay,
She was arrested by Harris, to her great dismay!
Off to the jailhouse poor Sue was taken,
Printed and mugged, her confidence shaken.
Formally charged by this great State,
With offering to Harris to fornicate.
...
So under advisement Sue's freedom was taken,
And in the bastille this lady did waken.
...
From her ancient profession she'd been busted,
And to society's rules she must be adjusted.
If from all of this a moral doth unfurl,
It is that Pimps do not protect the working girl!

Judge Arnold-Burger: OK, (contestant's name), which story is true? Is it the court of appeals panel screaming at each other on the bench, or is it the Washington judge calling traffic defendants stupid idiots or is it the judge who wrote his decision in prose about a prostitute?

Contestant: Answer

Judge Arnold-Burger: The correct answer is all of the above! The oral argument was before the en banc panel of the 5th Circuit in September 2011 in *United States v. Delgado*, No. 07-11401 (5th Cir. 1/19/11). See <http://abovethelaw.com/2011/09/benchslap-of-the-day-chief-judge-jones-tells-judge-dennis-to-shut-up/> for a link to the recording.

Judge Judith Eiler really did call defendants idiots and later lost her bid for re-election. The Washington Supreme Court held:

"Statements by a judge implying that a litigant is an 'idiot' or 'stupid' and the rendering of other derisive comments about persons who are before the judge is not conduct that engenders respect for the judiciary,"

Although Judge Judy claimed she had a First Amendment right to make such comments, the Washington Supreme Court disagreed and found that "judges do not have a First Amendment right to abuse people just because they use words to do it. By that logic, bank robbers would have a First Amendment right to hand over notes saying "This is a stickup." See *In re: Disciplinary Proceedings Against Eiler*, 169 Wash.2d 340, 236 P.3d 873 (2010).

And finally, Judge Rome from Reno County was publicly censured for holding a defendant up for public ridicule. The Supreme Court held that judges simply should not 'wisecrack' at the expense of anyone connected with a judicial proceeding who is not in a position to reply. Judicial humor is neither judicial nor humorous and the First Amendment did not protect the judge and the fact that Sue did not complain was of no import. The Kansas Supreme Court said:

Judges have long been enjoined from the use of humor at the expense of the litigants before them for reasons which should be apparent. Under the heading of 'Ancient Precedents' in the canons of judicial ethics adopted in 1924 by the American Bar Association this appears:

"Judges ought to be more learned than witty; more reverend than plausible; and more advised than confident. Above all things, integrity is their portion and proper virtue.' . . .

"Patience and gravity of hearing is an essential part of justice; and an over speaking judge is no well-tuned cymbal. . . .'-Bacon's Essay 'of Judicature

Judge Rome was found to have violated Canon 3A(3) of the code of judicial conduct in effect at the time which provided:

'(3) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom he deals in his official capacity *In re Rome* 218 Kan. 198, 199-201, 542 P.2d 676 (1975).

Neil Gosch: Thank you judges for helping us demonstrate that some of your colleagues do sometimes behave badly and that also should not be tolerated. Take it away Peter.

Peter Jouras: Playing for the Bazookas this round is; _____. Are you ready to play? Each of these stories is going to be about lack of civility in the courtroom or with court staff and only one of them is true. Take it away Denny Crane.

Denny Crane:

Civility School a concept whose time has come. New Hampshire, faced with a rising tide of incivility among lawyers has adopted a civility school. It is based on the same concept as traffic school and here's how it works. Judges are allowed to issue civility tickets to lawyers appearing before them. Three levels of citations are created--a warning worth 1 point, a three-hour fine worth 3 points, and a five hour fine, you guessed it, worth 5 points. The hours represent time the recipient must do in civility school. The state CLE Board has adopted a maximum 15 point limit. A lawyer who exceeds the maximum forfeits the right to appear in court, just as, in some states, drivers with too many tickets lose their licenses. Points would last and accumulate for three years, so good behavior could produce a clean record. Lawyers will soon be required by rule to list their point score on the face of their pleadings, with their other information.

Neil Gosch: Our next story is from Gov. Brownback.

Gov. Brownback:

Attorney Ben Smith represented John Doe in a traffic case pending in municipal court. After the docket had been concluded Smith approached the Municipal Court Clerk's window and demanded to see the prosecutor. He told the clerk to tell the prosecutor to get his 'ass' in the courtroom. The prosecutor met with Smith in the courtroom. After the meeting, Smith returned to the Municipal Court Clerk's window. Despite the fact that the clerks were already assisting him, he repeatedly rang the service door bell.

A few days later Smith returned to the Municipal Court. He told the clerk that he wanted to 'f---ing' file his paperwork. He presented a pleading entitled, 'Defendant's Application for Change of Judge' in Mr. Doe's case. The clerk, told him that the clerks were working on it. Obviously not satisfied with this response, Smith called the clerk a 'f---ing bitch.' He pointed his finger at the clerk hitting the glass that separated them. He told the clerk that she better do what he told her to do. He told her that he is smarter than anyone in the clerk's office, repeatedly pointing at the clerks, and calling them 'f---ing bitches.' He told the clerk to get her 'ass' in there to get his motion signed. Someone from the clerk's office telephoned the police department. Unfortunately, the police did not arrive until the attorney was driving away in his vehicle. His behavior was reported to the disciplinary administrator and he was disbarred for exhibiting conduct that reflected poorly on his fitness to practice law.

Neil Gosch: And finally, Michelle Bachman.

Michelle Bachman:

A Massachusetts state judge recently ordered a group of attorneys involved in a heated asbestos litigation to attend a special emergency refresher course in first-year ethics and civility. The order for the Labor Day Weekend gathering stated that coffee and doughnuts would be supplied for breakfast, but that lunch and dinner would be ordered at counsel's expense. It further encouraged the attendees to bring their sleeping bags, toothbrushes, teddy bears and jammies given the court's assessment of the extraordinary need for the education. Topics on the agenda included the consequences of making misrepresentations in pleadings, filings and correspondence with the court, and why it was not professional to publicly whine or complain about the amount of work that the court requires or that

asbestos litigation entails. Before issuing the order, the Massachusetts judge conferred with a federal judge in Texas who had previously issued a mandatory "kindergarten party" invitation to a group of squabbling attorneys.

Peter Jouras: OK, (contestant's name), which story is true, and it is just one this time. Is it civility school in New Hampshire, the attorney who called the clerk a f---ing bitch, or is it the kindergarten party ordered by a federal judge in Texas ?

Contestant: Answer

Peter Jouras: The correct answer is "B", the attorney who called the clerks "F"ing bitches. Don't mess with those clerks! *In re Romious* 240 P.3d 945, 947 (Kan.,2010) the Supreme Court held that shouting obscenities at municipal court clerks adversely reflects on the lawyer's fitness to practice law. This was one of about 5 bizarre incidents involving the attorney all brought under the same case. The attorney was charged with disorderly conduct for his behavior with the court clerks and was required to serve 4 days in jail. He was later disbarred. A Delaware superior court judge, Peggy Ableman, did issue a letter about whiners and childish antics in an asbestos suit and ordered six attorneys in the case to report for a mandatory civility class, but the case settled before the assigned date.

<http://abovethelaw.com/2011/09/judge-ordered-remedial-civility-classes-the-new-killing-it/>

Neil Gosch: OK, that concludes our third round. Roger, how did our teams do?

Roger Stanton: After Round 3, the Dum Dums have ___ point; the Smarties ___ point, the Jolly Ranchers, ___ points and the Bazookas have ___ points.

Neil Gosch: On to Round 4. Are we having fun? Next is our Limerick Challenge. Your team host will read a limerick to you with the last word or phrase missing. If you can fill in that last word or phrase correctly you will earn one point for your team. Dum Dums, again go first.

Lindsey Erickson: Playing for the Dum Dums this round is; _____. Are you ready to play?

Lindsey Erickson reads limerick:

Let's all set a goal to be civil

Without once resorting to drivell

We know how to act

We could make a pact

And seal it with diamonds from _____(Tivol)

Contestant: Answer.

Lindsey Erickson: The correct answer is "Tivol."

Denny Crane: Of course, if the lawyer steals the diamonds or commits other criminal acts it could compromise her law license. The Kansas Supreme Court in the case of *In re Baca*, 292 Kan. 390, 253 P.3d 348 (Kan.2011) has said:

Attorney's conviction for misdemeanor indecent exposure in another state, as well as his failure to comply with annual requirements to maintain his law license or to file an answer in his disciplinary proceeding violated rules of professional conduct providing that it is professional misconduct for a lawyer to violate the rules of professional conduct, commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer, or to engage in any other conduct that adversely reflects on the lawyer's fitness to practice law, as well as Supreme Court rules governing annual registration process for attorneys, and requiring attorney to file an answer to formal complaints. "Sup. Ct. Rules, Rules 208,"211(b); Sup. Ct. Rules, Rule 226, Rules of Prof. Conduct, Rule 8.4(a, b, g).

Lindsey Erickson: Your turn, Smarties.

Matt Corbin: Playing for the Smarties this round is; _____. Are you ready to play? Smarties Host reads limerick:

There now lives an old legal dude

To the young, he's consistently rude

To the judges, he's sweet

To his friends, quite a treat

But young lawyers think he should be _____ (booed)

Contestant: Answer.

Matt Corbin: The correct answer is booed.

Roger Stanton: In the case of *In re Gershater*, 270 Kan. 620, 17 P.3d 929 (Kan. 2001) The Kansas Supreme Court said essentially that good manners and common courtesy are requirements for lawyers.

In *Gershater*, the Kansas Supreme Court said that "A lawyer should be able to write a letter to an opposing party or a party with an adverse interest and intelligently communicate his or her position without the use of profane, offensive, or derogatory language." "[A]ttorneys are required to act with common courtesy and civility at all times in their dealings with those concerned with the legal process." *In re Vincenti*, 114 N.J. 275, 282, 554 A.2d 470 (1989). "Vilification, intimidation, abuse and threats have no place in the legal arsenal." *In re Mezzacca*, 67 N.J. 387, 389-90, 340 A.2d 658 (1975). "An attorney who exhibits the lack of civility, good manners and common courtesy ... tarnishes the entire image of what the bar stands for." *In re McAlevy*, 69 N.J. 349, 352, 354 A.2d 289 (1976).

The Kansas Supreme Court went on to state its agreement with the Ohio Supreme Court in *Columbus Bar Assn. v. Riebel*, 69 Ohio St.2d 290, 292, 432 N.E.2d 165 (1982), when it discussed civility and the duty of attorneys to treat others with respect. It stated:

It is within the real meaning and intent of our Code of Professional Responsibility that lawyers should always be cognizant of the necessity for good manners, courtesy and discourse, both to client and other practitioners, as being part of our professional ethics.

The zeal employed by an attorney in guarding the interests of his clients [and in communicating with adverse parties] must always be tempered so as not to inject his personal feelings or display a demeanor that subjects parties to a proceeding or opposing counsel to certain indignities.

The Supreme Court found that Gershater's correspondence to opposing counsel was "without doubt, lacking in courtesy and civility. The abusive and threatening nature of the language has no place in the legal world." Ms. Gershater was suspended indefinitely. Unfortunately, the day she received the notice in the mail she went to her Lawrence office, locked the door and shot and killed herself.

Matt Corbin: Your turn, Jolly Ranchers.

Judge Arnold-Burger: Playing for the Jolly Ranchers this round is; _____. Are you ready to play? **Judge Arnold-Burger reads limerick:**

My associate once was a female

But now I am sitting in thee jail

'Cause I told her my plan

We'd have sex in my van!

And I stupidly typed it on _____(email)

Contestant: Answer.

Judge Arnold-Burger: The correct answer is email.

Neil Gosch: Yes, the Kansas Supreme Court frowns upon lawyers soliciting sex or otherwise making inappropriate sexual comments to others in his office. Certainly not polite or civil behavior!

The Supreme Court in Kansas in the case of *In re Depew*, 290 Kan. 1057, 237 P.3d 24 (Kan.2010) has found a violation of KRPC 8.4(d) (2009 Kan. Ct. R. Annot. 602) (engaging in conduct prejudicial to the administration of justice) and 8.4(g) (engaging in conduct adversely reflecting on lawyer's fitness to practice law) based upon the following self-reported facts.

'I am writing to self-report a violation of the Kansas Rules of Professional Conduct that I committed. On Friday, January 18, 2008 I was Judge Pro Tem in the... District Court ... When I arrived that morning, I

engaged in a casual conversation with the Judge's Administrative Assistant, ... where we both made sexual innuendoes. During the conversation, I made inappropriate comments about what she was wearing. At one point, as she was walking past me in her office, I reached out and put my hand on her arm and asked her, "Where are you going?" I have, in the past, though not as a Pro Tem judge, made inappropriate comments to other Johnson County court staff of a sexual nature.'

Stan Hazlett Voice: Thou shalt not solicit sex from court staff.

Judge Arnold-Burger: Thank you, Stan. Your turn, Bazookas.

Peter Jouras: Playing for the Bazookas this round is; _____. Are you ready to play?

Peter Jouras reads limerick:

His opponent wrote asking for more time

His response: "No chance, your client is slime!"

But when the tables were turned

He was refused time he had not earned

And learned courtesy and civility are _____. **(sublime)**

Peter Jouras: The correct answer is "sublime."

Roger Stanton: As members of the Johnson County Bar, we are all reminded of the Tents of Professional conduct with respect to opposing parties and their counsel:

I shall be courteous and civil in all written or oral communications . . .

I shall treat opposing counsel as I wish to be treated, by agreeing to reasonable extensions in legal matters, by seeking to minimize the emotional and financial cost of litigation to the parties, and by seeking sensible resolution of disputes, whenever possible.

Denny Crane: Hey, I have a good one for you:

There once was a lawyer named Rex

Who had a diminutive organ for sex

When arraigned for exposure

He refrained with composure

De minimus non cure lex

That's Denny Crane over and out.

Neil Gosch: OK, that concludes our fourth round. We pause for a public service announcement

Neil Gosch: Now on to our final game, lightening fill in the blank. Each of our teams will have 60 seconds in which to answer as many fill in the blank questions as they can. Each correct answer is now worth 2 points.

Roger, can you give us the scores?

Roger: ____ is in the lead has ____ points, followed by ____ with ____ points, ____ with ____ points, and in last place ____ with ____ points.

Neil Gosch (read all these): We begin with the team in last place. The clock will start when I begin your first question and you will hear this when we are on the last question.

Neil Gosch: You will get a chance to answer the question that is being asked when the music plays. Are you ready? Fill in the blank:

1. A Connecticut judge has recently ordered lawyers representing a divorcing couple to exchange the _____ to their clients' Facebook and dating website accounts. **(Passwords)**
2. A Texas judge has recently come under fire after a video of him whipping his teenage daughter was uploaded to the _____ website. **(YouTube)**
3. A New York real estate law firm was criticized during Halloween when photographs were published on the Internet showing employees dressed as homeless people whose homes had been _____ by the firm. **(Foreclosed on)**
4. Normally considered rude, using all capital letters in an email is the equivalent of _____ in real life. **(Shouting / Yelling)**
5. Unwanted and unsolicited _____ email, which shares its name with an infamous lunch meat, is not only annoying but is also an easy way to send computer viruses. **(Spam)**
6. According to the Preamble to the Kansas Code of Professional Responsibility, a lawyer should use the law's procedures only for legitimate purposes and not to harass or _____ others. **(intimidate)**
7. A California lawyer was recently suspended from law practice AND fired from his job AND fined \$14,000 for posting trial details on his personal blog while sitting as a _____ in a criminal trial. **(Juror)**
8. In 2009, a North Carolina judge was reprimanded for ex parte communication with defense counsel via a _____ wall. **(Facebook)**
9. The _____ did not protect Florida attorney Sean Conway from discipline when he blogged about a Fort Lauderdale judge saying she was an "Evil, unfair witch." **(First Amendment)**

10. If a represented opposing party has a _____ Facebook profile, you cannot directly or indirectly friend them. Sending the party a friend request violated Rule 4.2 prohibiting communication with a party represented by counsel. **(Private)**
11. If you think you are the bomb for learning how to communicate with your clients by email, you are quickly moving into dinosaur status again. Today only 11 % of _____ use email, preferring instead Facebook, texting and twitter to communicate. **(teenagers)**
12. In September 2008 JDSupra, an internet platform for lawyers, posted 145 lawyers and legal professionals to follow on _____. Today over 1000 names appear on the list. **(Twitter).**
13. According to the Preamble to the Kansas Code of Professional Responsibility, a lawyer should demonstrate _____ for the legal system and for those who serve it. **(respect)**
14. According to the authors of Freakonomics, and as evidenced recently in Libya, the revolutions of the future will not be televised, they will be _____. **(Tweeted).**
15. You may be _____ from the practice of law for 10 days if you call your opponent a bottom-feeding, scum-sucking loser lawyer in an email exchange. **(Suspended)**
16. A journalist with the Wichita Eagle currently has a live blog of happenings in the courtrooms in the state and federal courtrooms in Sedgwick county which has made it to the ABA Top 100 Legal Blawgs called "What the Judge Ate for _____" **(Breakfast).**
17. Derry Miller, head of the Law Society of Upper Canada, recently advised his colleagues, who also tend to be suffering from an uptick in incivility, to channel their inner Lady Mary Wortley Montague, an 18th Century writer aristocrat who said "Civility costs nothing and buys _____. **(everything).**
18. Rule 3.5(d) of the Kansas Code of Professional Responsibility states that a lawyer shall not engage in undignified or _____ conduct degrading to a tribunal. **(discourteous)**
19. Twitter limits your communication to _____ characters. **(140).**
20. Don't put anything in an email, on a blog, or in a text or tweet that you wouldn't want to read out loud to the judge in open court or you wouldn't want to have to explain to Stan _____. **(Hazlett).**
21. As _____ wrote in The Taming of the Shrew, "And do as adversaries do in law, Strive mightily, but eat and drink as friends." **(William Shakespeare)**
22. According to Benjamin Franklin, "Glass, china and _____ are easily cracked and never mended well." **(Reputation)**
23. If you receive a text or email from opposing counsel telling you to stop being a PITA, he or she is calling you a _____. **(Pain in the ass).**

24. If you receive a text or email from opposing counsel telling you to get your discovery response to them ADN, they mean _____. **(Any day now)**
25. If you hit _____, your email goes to everyone on the "to" line. **(Reply All)**
26. Although it may be appropriate in a zoo, characterizing a court as a _____ court may get you in trouble. **(Kangaroo)**
27. The American Inns of Court are designed to improve the skills, professionalism and _____ of the bench and bar. **(Ethics)**
28. Harper Lee wrote about _____ the standard bearer of civility in the law. **(Atticus Finch)**
29. The professional creed for the American Inns of Court states that lawyers will uphold the standards of dignity, _____, and courtesy. **(Civility)**

Roger, how did our teams do?

Roger: _____ had _____ correct answers so (team) wins our prize. Congratulations, (team)

Neil Gosch: Well done. Thank you to our celebrity panel and our great contestants for playing: Wait, Wait, Don't Tell Me Civility Matters. See you next month for the Earl E. O'Connor Inn of Court Team 4's presentation here at the beautiful Homestead Country Club! Drive safe!

