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Cover Page Footnote

With gratitude for the inspiration his title and work provided to Robert Fulghum, *All I Really Need to Know I Learned in Kindergarten* (Ballantine Books 15th Rev. Ed. 2004).

ALL I REALLY NEED TO KNOW ABOUT PROFESSIONALISM I LEARNED IN JUDGE RICE'S COURTROOM¹: A TRIBUTE TO THE HONORABLE WALTER HERBERT RICE

*Lori Ellen Shaw*²

In recent years, “professionalism” has become the hot topic among practitioners and academicians alike.³ The lack of this vital attribute has been decried far and wide. Legal scholars have devoted reams of paper to pontificating about the problem; special bar committees have been formed to investigate the problem; and attorneys have been dragged, sometimes kicking and screaming, to mandatory CLE’s intended to resolve the problem.

With apologies to all of the above, I believe that I speak for a generation of Dayton attorneys when I say, all I really need to know about professionalism, I learned in Judge Rice’s courtroom. I had the extraordinary good fortune to step directly from the law school classroom into Judge Rice’s classroom - his courtroom - where I served as his law clerk. The lessons on professionalism I learned from his example left an indelible mark.

These days, I serve as Assistant Dean for Student Affairs at the University of Dayton School of Law (UDSL), and if I had my way, every one of our graduates would do a stint in Judge Rice’s courtroom. No one could ask for a better post-graduate study in professionalism. Since that cannot be, I must beg Judge Rice for his indulgence as I turn his tribute into a practical lesson for UDSL students and law students everywhere.⁴

During his tenure on the bench, Walter Herbert Rice has been the most widely trusted leader within the Dayton community,⁵ a remarkable position for a jurist. Indeed, I suspect that those readers from outside the southwestern Ohio area may find it difficult to fathom the measure of his

¹ With gratitude for the inspiration his title and work provided to Robert Fulghum, *All I Really Need to Know I Learned in Kindergarten* (Ballantine Books 15th Rev. Ed. 2004).

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³ W. Bradley Wendel, *Public Values and Professional Responsibility*, 75 *Notre Dame L. Rev.* 1, 3 (1999).

⁴ Given Judge Rice’s passion for educating the next generation of lawyers, I somehow suspect he will approve of this endeavor.

⁵ See generally Shauna McSherry, *Written Under September Skies for a Quiet Hero of Our Time: A Tribute to the Honorable Walter H. Rice*, 30 *U. Dayton L. Rev.* 119 (2004).

influence. In and out of the courtroom, he is the man to whom we turn for guidance. The refrain, “Well, what does Judge Rice think?” has been sung countless times in every venue imaginable.

Having demanded accuracy in my every word, I have no doubt Judge Rice would be bitterly disappointed if I left you with the impression that the entire community sat enthralled by his every word. Not everyone has agreed with his every decision (and a few have agreed with almost none), but Judge Rice has earned the respect of even his harshest critics. No one questions his fairness, his compassion, his dedication to justice, and his desire to build community. In short, we trust him to do what is right.

So how did he win the trust and respect of an entire community? What makes Judge Rice the consummate professional? Most important, how can we follow his example? Here are the lessons I learned from Walter H. Rice:



Consider yourself lucky.

Upon his retirement, baseball legend Lou Gehrig declared himself to be “the luckiest man on the face of the earth.”⁶ Judge Rice may never have uttered those words aloud, but he has lived them each day of his working life. His every word and action bespeak a passion for his profession.

During my time with the Court, its docket was among the largest in the United States, and Judge Rice was the only district court judge sitting in Dayton full time. Every discovery dispute, every TRO, every motion, crossed his desk. He was generally the first to arrive at our office and the last to leave. During one memorable week, he conducted a civil trial each morning and a criminal trial each afternoon, all the while dealing with the normal deluge of motions.

Not once, did I hear Judge Rice complain about his workload. To the contrary, he outpaced those of us on whom he had a few years in age in both energy and genuine enthusiasm. Nothing short of a near-death experience kept him from his duties. His passion inspired ours. If Lou Gehrig was the iron man of the baseball world, Walter H. Rice is the iron man of the federal courts.

⁶ Sporting News, *Baseball's 25 Greatest Moments*, <http://www.sportingnews.com/baseball/25moments/11.html> (last accessed June 7, 2005).

Here is a man who views his work as a calling, who feels privileged to serve society by interpreting and applying its laws and by watching out for those without a voice of their own. His zest for his task never wanes. Each new case, each new motion, poses a challenge that he undertakes with relish.

From him I learned that I should always remember what an honor it is to play even a small part in our justice system. If I look for the joy in my work, I will find it, and I will be the better for it.



Do it right.

Like most judges' chambers in this era of tight security, Judge Rice's chambers are designed to keep people out. Visitors to the Court face the usual array of guards, metal detectors, and the like. In such an environment, it becomes all too easy to become detached, to forget that Docket No. C-3-87-4590 represents someone's livelihood and that Docket No. CR-3-88-5643 represents someone's freedom. But Judge Rice never forgot that it is all about the people, and he never let me forget either.

From my very first day, Judge Rice constantly reminded me that what we did or did not do could have a momentous impact on the lives of those who had entrusted themselves to the Court. Being fast was important, but being right was essential. People were counting on us.

While I was to begin my research by reviewing the authorities cited by counsel, that was by no means the end of the process. My research would end when we were both satisfied that we had the necessary authority in hand and not before. An opinion would be signed only when the judge was convinced that the issues had been examined from all possible sides and that the rule of law had been properly applied. There were no shortcuts in Judge Rice's chambers. We put every bit of our intellect and our heart into every decision.

Judge Rice is adamant that no plaintiff or defendant in his Court will be penalized because he or she has the misfortune of being represented by counsel who failed to do the job. We owe the parties and the public a just decision.

He taught me that the justice system can only be at its best if I give it my best.



“When People Talk, Listen Completely.”⁷

Garbed in flowing robes and sitting on an ornate platform high above the masses, from the back of the courtroom, a judge appears almost godlike. Indeed, judges are set apart from mere mortals. Spectators rise as one when a judge enters the courtroom; counsel beg the judge’s permission to approach the bench; and parties anxiously await the judge’s decisions. In such a rarified atmosphere, it is easy to understand how some judges become distant, alienated from the cares and concerns of the average person.

But instead of becoming isolated by his position, Judge Rice has used it to connect with others. At heart, he is a problem solver, a modern day white knight seeking to resolve the world’s ills. To find a resolution, he requires every scrap of information he can gather, so he listens. He listens more intently than anyone I have ever known. In the words of Hemingway, he listens completely.⁸

If you are an attorney arguing in Judge Rice’s courtroom, you can rest assured that you will face tough questioning. You can also rest assured that you will not be browbeaten, ridiculed, or interrupted. The questions will be issued in calm, clear tones and will be thoughtful and sincere. If you need extra time to explain a point, you will have it. Opposing counsel will be afforded exactly the same treatment. Civility rules the day.

If you are a convicted felon awaiting sentencing, you can rest assured that Judge Rice will not pull any punches when lecturing you on the harm you have inflicted upon the victim and upon society. You can also rest assured that he will address you with the same respect he would show a fellow judge. When he asks you why the Court should give you less than the maximum sentence or how you plan to turn your life around, it is because he is genuinely interested in your answer. He seeks to understand how you came to be standing in his court awaiting judgment and if there is any way in which he can help you to avoid repeating this scene. He cares about you and about those whom you have and may hurt.

If you are a law clerk nervously preparing for your first conference with Judge Rice, you can rest assured that he will spot every flaw in your carefully constructed analysis. You can also rest assured

⁷ Ernest Hemingway quoted in Jone Johnson Lewis, *Wisdom Quotes*, <http://www.wisdomquotes.com/002592.html> (last accessed June 7, 2005).

⁸ *Id.*

that he will kindly explain where you erred and how you can avoid doing so in the future. When he asks you how the law should be interpreted, do not hesitate to tell him exactly what you think, even if he seems likely to adopt a different position. His mind is open, and to their great delight, he has always given his clerks full reign to voice their opinions. Whatever he ultimately decides, he will thank you for helping him see the issue in a different light.

Judge Rice gives *everyone* involved in the process his or her day in court. In the final analysis, in or out of the courtroom, all that most of us want is a chance to be heard.

Judge Rice taught me that I can learn much more and help much more when my mouth is shut and my mind is open.



Have the courage of your convictions.

In one memorable passage of *Harry Potter and the Goblet of Fire*, wise Professor Dumbledore counsels a distraught faculty member on the danger of dwelling upon public opinion: “Really, Hagrid, if you are holding out for universal popularity, I’m afraid you will be in this cabin for a very long time.”⁹ Over the years, Judge Rice has been asked to address some of the most challenging and controversial issues of our time.¹⁰ Yet, never has he given in to the temptation to shape his decisions to fit public opinion and never has he hidden from public view.

When I began my clerkship, I often wondered how Judge Rice coped with the responsibilities and pressures of his position. Before they were even written, I knew that some of his opinions were destined to become fodder for the press and the stuff of which heated letters to the editor are made. Being a federal judge is all about making tough calls and all about knowing that, no matter what you decide, someone will disagree.

In crafting his judgments, Judge Rice never allows public opinion to enter the equation. Nor does he allow his personal views on an issue to interfere with what he views as his solemn duty to uphold the

⁹ J.K. Rowling, *Harry Potter and the Goblet of Fire* 454 (Arthur A. Levine Books 2000).

¹⁰ E.g., *Bronson v. Bd. of Educ.*, 604 F. Supp. 68 (S.D. Ohio 1984) (one of a string of decisions involving the desegregation of Cincinnati’s public schools); *Med. Prof. Corp. v. Voinovich*, 911 F. Supp. 1051, 1060 (S.D. Ohio 1995) (holding Ohio law regulating partial-birth abortions to be unconstitutional). For an excellent account of Judge Rice’s many contributions to the law, read Susan Newhart Elliott, *It Takes a Team: A Tribute to the Honorable Walter Herbert Rice*, 30 U. Dayton L. Rev. 169 (2004).

law. Where he sees a need for change in the law, he never shies away from voicing it, but he leaves that change in the hands of those charged with creating our laws.

I came to see that he finds strength and solace in his conviction that he serves a vital and unique role in the distribution of justice. He takes seriously the oath he made when he assumed his office:

I, Walter Herbert Rice, do solemnly swear that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as a United States District Judge according to the best of my abilities and understanding, agreeably to the Constitution and laws of the United States. So help me God.¹¹

It is not all about him — he is part of a much greater endeavor. I think that belief is what allows him to sleep at night. He ends the day secure in the knowledge that he did his best to uphold the Constitution and laws of the United States.

I learned from Judge Rice that sometimes being part of a noble cause comes at a personal price, but it is a price worth paying.



Don't lose the people to the process.

As a clerk, I often felt impossibly outnumbered by all of those seeking the wisdom of the court. During my tenure, Judge Rice had well over 1,000 cases on his docket, and of course, each case involved at least two attorneys. If you do the math, this meant that Judge Rice and his two full-time law clerks were responsible for responding to the needs of 2,000+ attorneys, each of whom seemed utterly convinced that his or her case was the only one that mattered.¹²

Working in such an environment could have been pure misery. I could have dreaded going to work each morning, but I did not for I knew that when I arrived I would find kindness, camaraderie, and laughter. The occasional storm front might move through the office, but every storm would pass.

¹¹ 28 U.S.C. § 453 (1976).

¹² At one point, the tapes the three of us had submitted to Judge Rice's assistant for transcription filled a ten foot conference table.

I was not “law clerk number two” or “the one with the long hair.” I was not a cog in the wheel to be used and discarded. I was “Lori.” I had good days and bad days, and I enjoyed nothing better than talking baseball with my friend, Judge Rice. When I did something well, I could expect praise and thanks. When I did something poorly, I could expect understanding. And always, always, I could expect a healthy dose of Judge Rice’s legendary wit. I suspect that he is the only federal court judge who sends every law clerk out into the world with his or her own personal “roast.”

Judge Rice sets the tone for the office. Every person is to be valued. Employees who do not embrace this concept are not long for his chambers. Shirley Cobb, the judge’s capable, calm, long-time assistant, is a veritable bedrock of support for one and all. The atmosphere motivates everyone to put forth his or her best effort. No one wants to let down the side.

From Judge Rice, I learned the importance of valuing your colleagues and telling them about it.



Embrace the world.

Once upon a time, attorneys lived in the communities where they practiced. They became part of the fabric of the community, coaching Little League, spearheading charity drives, and serving on the town council. They were leaders. Today, all too many attorneys in cities large and small declare themselves “too busy” to play an active role in civic affairs. They will cheerfully give of their funds, but decline to give of themselves.

Imagine my surprise when I discovered that my boss, the hardest working person I ever encountered, was also the most generous with his time and talents. He chaired; he spoke; he facilitated; he educated; he mediated; he supported; he mentored; he gave. Judge Rice is a throwback to that earlier era. For him, whether to serve his community has never been an issue. He truly lives by the adage, “To whom much is given, much will be expected.”¹³

But as I observed Judge Rice literally running from one event to the next, I discovered something amazing. Yes, he gave, but he also received. He returned to the office brimming with enthusiasm, ideas, and

¹³ Luke 12:48 (New American).

a stronger understanding of the society that he served. Getting out of the office made him a wiser and better judge.

From Judge Rice, I learned the value of leaving the office and embracing the world.



Believe.

“Believe.” That lesson is more than a bit vague. Believe in what? Believe in possibilities. Believe in the system. Believe in people. Believe in second chances. Whether in the courtroom or in the community, people turn to Judge Rice for help because he gives them hope, and he can give them hope because he possesses it in great abundance.

I most often saw this hope manifest itself when Judge Rice undertook the task that gave him the greatest joy — swearing in new citizens of the United States. He often shares with new citizens that his own grandfather recalled the day he became a citizen as the happiest day of his life. While acknowledging that our nation is not perfect, he always exhorts new citizens to work with him to make it the best. He believes that can happen, and he makes those around him believe it, too.

I learned from Judge Rice to believe that a better world is within our grasp and to devote my days to creating that world.

Thank you, Judge Rice, for being the best teacher I ever had.